No. 83, Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

STATE OF MARYLAND,
STATE OF ILLINOIS,
STATE OF INDIANA,
COMMONWEALTH OF MASSACHUSETTS,
STATE OF MICHIGAN,
STATE OF NEW YORK,
STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,
STATE OF WISCONSIN,

Plaintiffs,

v.

STATE OF LOUISIANA,

Defendant.

ON REPORT OF THE SPECIAL MASTER DATED SEPTEMBER 15, 1980

MOTION FOR LEAVE TO FILE AND REPLY BRIEF OF THE PLAINTIFF STATES

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MOTION FOR LEAVE TO FILE REPLY BRIEF OF THE PLAINTIFF STATES

The State of Maryland, the State of Illinois, the State of Indiana, the Commonwealth of Massachusetts, the State of Michigan, the State of New York, the State of Rhode Island and Providence Plantations, and the State of Wisconsin ("the plaintiff states"), by their undersigned attorneys, move the Court for leave to file the accompanying reply brief to the defendant's brief of December 5, 1980, and in support of this motion state:

1. On October 6, 1980, the Court ordered that the Report of the Special Master dated September 15, 1980, be filed and that oral argument be set in due course.

2. By letter dated October 16, 1980, the Clerk advised that while no provision had been made in the order of October 6, the Court had directed him to advise that exceptions and replies to them might be filed by November 14 and December 5, 1980, respectively.

3. Exceptions were timely filed by the plaintiff states and the defendant, as were replies to the respective exceptions.

4. The exceptions and replies might properly be viewed as the merits' briefs of the respective parties under subparagraphs 1 and 2 of Rule 35, in which event subparagraph 3 of Rule 35 would allow to be filed as a matter of right a reply brief of the sort this motion seeks leave to file, provided it were received no later than one week before the date of oral argument; however, it is unclear that Rule 35 is literally applicable in the present posture of the case, and thus it is appropriate for the plaintiff states to file this motion.

5. The accompanying reply brief, which is being received with this motion more than one week before the date of oral argument, should be of assistance to the Court, in a number of respects, in ruling on the exceptions of the plaintiff states to the Report of the Special Master:

(a) the reply brief provides a succinct and focused response to the defendant's fifty-six-page brief of December 5, 1980;

(b) the reply brief references and discusses the scholarly commentary that has recently appeared on the constitutionality of the First Use Tax, including the most exhaustive exposition to date, which did not appear until after

the plaintiff states filed their exceptions on November 14, 1980;

(c) an appendix to the reply brief, in chart form, collects numerous contentions of the defendant and references where they are dealt with in earlier opinions of the Court, the findings of the Special Master, or the other filings in this case;

(d) an appendix to the reply brief reprints, and thus makes available to the Court in a convenient form, the reply of the plaintiff states to Louisiana's proffer of proof to the Special Master, which proffer was itself reprinted as an appendix to the defendant's brief of December 5, 1980;

(e) an appendix to the reply brief reprints, and thus makes available to the Court in a convenient form, certified copies of the verbatim legislative history of the First Use Tax, which was originally provided to the Court in typescript form by the Solicitor General with his letter to the Clerk dated November 28, 1979.

WHEREFORE, the plaintiff states request that the Court enter an order granting them leave to file the accompanying reply brief, together with its appendices.

Respectfully submitted,

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ON REPORT OF THE SPECIAL MASTER DATED SEPTEMBER 15, 1980

REPLY BRIEF OF THE PLAINTIFF STATES

INTRODUCTION

More than fifty years ago, in a similar dispute between sovereign states that also involved a "matter of grave public concern" and the power of one state to impede the flow of natural gas to another, the Court recognized that,

"notwithstanding the importance of the question, its solution [was] not difficult." *Pennsylvania v. West Virginia*, 262 U.S. 553, 592, 596 (1912). Here, too, despite the many briefs written during this case's short history, the root issues remain simple and their solution clear.

In this reply brief, which responds to the defendant's brief of December 5, 1980, the plaintiff states will not dwell at length on each point raised by Louisiana.[1] Instead, the plaintiff states seek only to refocus attention on the real issue here — the facial unconstitutionality of the Louisiana First Use Tax — and the established principles that require its immediate invalidation.

ARGUMENT

NO EVIDENTIARY HEARING IS NECESSARY TO CONCLUDE THAT THE FIRST USE TAX VIOLATES THE SUPREMACY CLAUSE AND THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION.

No evidentiary hearing is needed to appreciate the plain language, obvious operation, and intended purpose of the First Use Tax. The scheme reaches beyond Louisiana's boundaries to tax Federal Outer Continental Shelf gas. The statute taxes the volume of interstate gas at a flat rate, seeks to require the Federal Energy Regulatory Commission to pass-through the tax to out-of-state consumers by declaring the tax a "cost" of marketing the gas and by preventing the pipeline companies from passing

[1] The defendant's latest filing is legally inaccurate in a number of significant respects. For the Court's convenience, Appendix A to this reply brief includes capsule responses to Louisiana's assertions with references to earlier discussions of them. *Infra* at 1a. Because the defendant has attempted to becloud matters further by reprinting its lengthy proffer to the Special Master, there also appears as Appendix B the reply filed by the plaintiff states. *Infra* at 1b.

back the tax to natural gas producers,[2] and totally insulates in-state interests by means of exemptions, exclusions, and tax credits.

An announced purpose of the tax is to exact from interstate natural gas consumers compensation for alleged damage to Louisiana resources, La. Rev. Stat. Ann. § 47:1301 (West Supp. 1980); Note, *The Effect and Validity of State Taxation of Energy Resources,* 58 Wash. U.L.Q. 345, 357-59, 361 (1980); Reply of Louisiana to Exceptions and Supporting Brief of Plaintiff States at 44 (Dec. 15, 1980), and the scheme is "the most recent step in Louisiana's continuing effort to press its claim to profit from the production of oil and gas off its coast." Report of Special Master at 25 n.16. In essence, the statute strives to take advantage of Louisiana's location as the avenue of Federal OCS gas to export the tax to out-of-state consumers. *See* B. Tauzin, *Louisiana's First Use Tax,* Proceedings

[2] The defendant's argument that it never intended to affect the Commission's decision on whether to permit pass-through of the tax is belied by the explicit legislative history (which Louisiana consistently ignores) on this point. *See, e.g.,* Hearings on H.B. 768, Senate Committee on Revenue and Fiscal Affairs (June 26, 1978) at 27 (Testimony of Mr. Tauzin) ("FERC is going to have to allow this particular tax to pass on through."), reprinted *infra* at 77c, 112c. (As a convenience to the Court, the verbatim transcripts of the legislative hearings on the First Use Tax are reprinted as Appendix C to this reply brief.) Moreover, the unwavering theme of the legislative history has been echoed by the sponsor and chief architect of the First Use Tax, as well as by others. *See* B. Tauzin, *Louisiana's First Use Tax,* Proceedings of the 72nd Annual Conference of the National Tax Association — Tax Institute of America 194, 195 (1979) ("The tax is assessed against the *owner* of the natural gas, who is required to pass it *forward* to the consumers rather than backwards to the producer, . . ."), Comment, *The Work of the Louisiana Legislature for the 1978 Regular Session — A Student Symposium,* 39 La. L. Rev. 101, 221 (1978) ("[T]he 'pass-through' provision . . . passes the cost of the tax on to consumers in other states, . . .").

of the 72nd Annual Conference of the National Tax Association — Tax Institute of America 194, 195 (1979).

No evidentiary hearing is needed to conclude that the First Use Tax interferes with the Commission's ratemaking responsibilities and, in particular, its authority over the determination of costs associated with the transportation and sale of natural gas.[3] Here, too, the verbatim legislative history speaks without contradiction. *See supra* at 7, n.2. *See also* Hearings on H.B. 768, House Committee on Ways and Means (June 5, 1978) at 12 (Testimony of Mr. LaBorde) ("If the first use tax passes, it's going to be a passed on tax, no question about it."), reprinted *infra* at 1c, 17c. Also, two commentators have so concluded after careful study. W. Hellerstein, *State Taxation in the Federal System: Perspectives on Louisiana's First Use Tax on Natural Gas,* Shell Foundation Lecture at Tulane University School of Law (Nov. 20, 1980) at 34-35; Note, *The Effect and Validity of State Taxation of Energy Resources,* 58 Wash. U.L.Q. 345, 362 n.102 ("The Louisiana tax interferes with Section 7(c) of the Natural Gas Act, 15 U.S.C. § 717(f)(c) (1976).").

The defendant's proffered distinction between raw and refined gas and claim that processing defers the commencement of interstate commerce have been decidedly rejected by the Court, *California v. Lo-Vaca Gathering Co.,* 379 U.S. 366, 369 (1965); *Permian Basin Area Rate Cases,* 390 U.S. 747, 820 n.111 (1968); *Deep South Oil Co. v. FPC,* 247 F.2d 882, 888 (5th Cir. 1957), *cert. denied,* 355 U.S. 930 (1958), and are simply irrelevant. These matters certainly do not support the taking of evidence. Nor would an unprecedented examination of the Commission's ability

[3] It is clear that state taxing schemes are not immune from Supremacy Clause scrutiny. *See* Arizona Public Service Co. v. Snead, 441 U.S. 141 (1979); McGoldrick v. Gulf Oil Corporation, 309 U.S. 414 (1940). Moreover, cases of this sort may be decided summarily. *Id.*

to grapple with the First Use Tax tell the Court more than it already knows, that is, that the regulated or the beneficiaries of natural gas regulation will suffer as long as the First Use Tax remains in effect.

No evidentiary hearing is needed to conclude that the First Use Tax violates the federal ban on the application of state taxation laws to the Outer Continental Shelf. Indeed, the Special Master, albeit while apparently rejecting this Supremacy Clause claim, acknowledged that the "conflict between Louisiana's law and the Outer Continental Shelf Lands Act does not appear to require an evidentiary hearing" and that "[t]his is a legal question which can be answered by an analysis of the two statutes." Report of Special Master at 29. *See* Brief in Support of Exceptions of Plaintiff States at 23-26 (Nov. 14, 1980).

No evidentiary hearing is needed for the Court to find that the First Use Tax discriminates on its face against interstate commerce.[4] The total immunity of in-state interests from the tax eviscerates any claim that Louisiana could make that the First Use Tax is a "compensating" tax. *See* Hearings on H.B. 768, Senate Committee on Revenue and Fiscal Affairs (June 26, 1978) at 3 (Testimony of Mr. Tauzin) ("[T]he entire package . . . has been amended as far as we can practically go to guarantee against any impact upon producers and processors and people in this state who would otherwise possibly feel some impact from the imposition of the tax."), reprinted *infra* at 77c, 81c. As Professor Hellerstein has observed:

> [T]he [severance tax] credit destroys the symmetry between the tax treatment of gas extracted in

[4] *See* Portland Cement Co. v. Minnesota, 358 U.S. 450, 458 (1959) ("Nor may a State impose a tax which discriminates against interstate commerce either by providing a direct commercial advantage to local business . . . or by subjecting interstate commerce to the burden of multiple taxation.").

Louisiana and gas extracted offshore that the First Use Tax was purportedly designed to create.

The grant of a severance tax credit for First Use Taxes paid effectively removes the burden of the First Use Tax from gas extracted offshore to the extent that the First Use Taxpayer has severance tax liability. In substance, this means that gas extracted offshore and gas extracted in Louisiana will be treated the same for Louisiana tax purposes only when the First Use Taxpayer has no severance tax liability to absorb the First Use Taxes. In such cases, gas extracted offshore, like gas extracted in Louisiana, will bear a tax at the rate of seven cents per thousand cubic feet. In cases where the severance tax credit is available, however, this equality is eliminated. Gas extracted offshore and brought into Louisiana by a First Use Taxpayer extracting an equivalent amount of gas in Louisiana will in effect escape First Use Tax liability altogether. Gas extracted offshore and brought into Louisiana by a First Use Taxpayer without any Louisiana gas production, however, will bear the full burden of the First Use Tax. Equality is no longer "the theme that runs through all sections of the statute." [*Henneford v. Silas Mason Co.*, 300 U.S. 577, 583 (1937), the leading compensatory tax case.] Instead a distinct competitive advantage is created for gas subject to the First Use Tax when the First Use Taxpayer carries on mineral extraction activities in Louisiana. On its face, this competitive advantage seems vulnerable to a commerce clause challenge because it favors taxpayers with in-state activities. The Court has consistently invalidated as discriminatory taxes that provide a direct commercial advantage to those engaged in local economic activity. [*Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318, 329 (1977).] Here an incentive is provided for First Use Taxpayers to undertake mineral extraction activities in Louisiana so as to minimize their effective First Use Tax burden and to compete on equal terms with other First Use Taxpayers whose First Use Tax burden has already been so minimized. The Court has explicitly condemned this type of incentive under the commerce

clause in both the tax and regulatory contexts. [*Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970); *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64 (1963).]

W. Hellerstein, *State Taxation in the Federal System: Perspectives on Louisiana's First Use Tax on Natural Gas*, Shell Foundation Lecture at Tulane University School of Law (Nov. 20, 1980) at 23-24. *See also* Note, *The Louisiana First-Use Tax: Does It Violate the Commerce Clause?*, 53 Tul. L. Rev. 1474, 1499 (1979) ("If one reads the first-use tax and the tax credit provisions together, it is evident that in-state energy production and, more importantly, some in-state private gas operations receive a significant competitive advantage. Clearly, even the most liberal reading of [*Department of Revenue of Washington v. Association of*] *Washington Stevedoring* [*Companies*, 435 U.S. 734 (1978),] would indicate that this is unconstitutional.").[5]

No evidentiary hearing is necessary to determine that in "actuality of operation" the First Use Tax discriminates against interstate commerce. In *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 69 (1963), this Court, scrutinizing a sales-use tax scheme, pointed out that use taxes, common to most of the states, could not be viewed in "isolation" but must be considered in "actuality of operation" in conjunction with the "whole scheme of taxation," including sales taxes. There may be cases where an evidentiary hearing is required to determine what the effects of a particular tax are "in actuality of operation." *Cf. Department of Revenue of Washington v. Association of Washington Stevedoring Companies*, 435 U.S. 734, 751 (1978). However, it is clear that in adopting the "*actuality*

[5] Because on its face the First Use Tax scheme is discriminatory and outside the legal requirements of a compensating tax and because the "ongoing processing dispute," Report of Special Master at 28, is without relevance to this particular Commerce Clause inquiry, the Court can appropriately and immediately rule on this question of law.

of operation" phrasesology, the Court was not decreeing, as the Special Master here seems to have inferred, that an evidentiary hearing be held in every case to determine whether a tax is constitutionally discriminatory. All that the Court was doing in *Halliburton* was repeating the view that a tax can not pass or fail constitutional muster on the basis of labels and nominalism without consideration being given to the taxing scheme as a whole. *Halliburton* is no aberration. Rather, in recent years the Court has consistently directed this analysis in Commerce Clause cases. *See, e.g., Complete Auto Transit v. Brady,* 430 U.S. 274, 279 (1977) (consideration is to be given "not to the formal language of the tax but rather its practical effect"); *Colonial Pipeline Co. v. Traigle,* 421 U.S. 100, 115 (1975) (Justice Blackmun, joined by Justice Rehnquist, concur- (rejecting "taxation by semantics").

It certainly does not follow from this repudiation of overly abstract and unrealistic analysis that an evidentiary hearing is to be held whenever the constitutionality of a taxing scheme is challenged under the commerce clause. What *Halliburton* means here — and all that it means — is that the First Use Tax cannot be judged, as Louisiana would have it, by simply focusing on the tax as a complement to the Louisiana Severance Tax. Rather what must be considered is the parade of exclusions, credits, and exemptions contained in the First Use Tax and its companion Severance Tax Credit, which combine to protect and benefit Louisiana interests and discriminate against out of staters. As this Court found in *Boston Stock Exchange v. State Tax Commission,* 429 U.S. 318 (1977), no evidentiary hearing is necessary for this determination.

No evidentiary hearing is needed to find that the First Use Tax is not fairly apportioned and invites the risk of multiple burdens on interstate commerce. As Professor Hellerstein has cogently observed, "The First Use Tax is

not apportioned at all, let alone fairly apportioned to activities conducted by the taxpayer in the state, . . ." W. Hellerstein, *supra* at 8-9. *See* Note, *supra,* 53 Tul. L. Rev. at 1495-96.[6] The tax attaches a flat rate of seven cents per thousand cubic feet to the entire volume of natural gas and draws no distinction with respect to the eight widely varying "uses," either as to amount of the tax or the state services which are said to justify its imposition. Moreover, only a modicum of the proceeds from the tax are earmarked for the defendant's loudly-proclaimed environmental concern,[7] and the scheme evidences no interest in the environmental damage caused by in-state businesses, including those operating offshore within the three-mile limit. Indeed, the tax immunizes producers, who reason would suggest, contribute greatly to the complained of damage. Finally, all of the "uses" could occur in other states, even processing, which the case law holds not to interrupt commerce and which could just as well take

[6] The author of this note states:

> Applying the fair apportionment and sufficient relation to services provided tests to the language of the Louisiana First-Use Tax Act reveals clear constitutional problems. First, the tax is imposed at a flat rate of seven cents per unit, and flat rate taxes have traditionally been challenged as bearing no relation to the amount of activity within the taxing state. This is especially true when one considers that the same rate of tax is imposed on a variety of "uses," some of which take advantage of more state services than others. Thus, even under a liberal apportionment test, the tax might not pass constitutional muster. In addition, because a flat rate tax does not take into account the amount of activity within the state, there is the danger of multiple burden since many of the uses taxed are not strictly local and may occur in more than one state.

53 Tul. L. Rev. at 1495-96.

[7] The first $500 million dollars of First Use Tax proceeds are deposited into an Initial Proceeds Account for investment purposes. La. Rev. Stat. Ann. § 47:1351 (West Supp. 1980). Additional proceeds are to be disbursed in the following fashion: 75% for debt retirement and redemption; and 25% for barrier island conservation.

place elsewhere. Clearly, if fair apportionment has any meaning in Commerce Clause analysis, the First Use Tax, on its face, violates the requirement.

Louisiana's repeated attempts to convince the Court to accept the defendant's jurisdictional and prudential contentions, including those relating to abstention,[8] are cut from the same cloth. If these arguments were accepted, the Court, despite its original and exclusive jurisdiction, could *never* entertain an original action between sovereign states, *never* hold as a matter of law that a state taxing scheme offends the Supremacy Clause or the Commerce Clause, and *never* grant a motion for judgment on the pleadings. As the Court's own different experience and commonsense indicate, Louisiana's contentions are frivolous.

More than fifty years ago, in *Pennsylvania v. West Virginia,* 262 U.S. 553 (1923), the Court pierced a similar veil of objections to confront and condemn one state's attempt to exploit its position with respect to natural resources. The present case warrants the same result. As the Court noted in *Georgia v. Pennsylvania Railroad,* 324 U.S. 439, 450 (1945) (citations and footnote omitted):

> The original jurisdiction of this Court is one of the mighty instruments which the framers of the Constitution provided so that adequate machinery might be available for the peaceful settlement of disputes between States . . . . Trade barriers, recriminations, intense commercial rivalries had plagued the colonies. The traditional methods available to a sovereign for the settlement of such disputes were

[8] Kentucky v. Indiana, 281 U.S. 163, 176-77 (1930), is dispositive of Louisiana's request for abstention. As the Court held there, "When the states themselves are before this court for the determination of a controversy between them, neither can determine their rights *inter sese,* and this court must pass upon every question essential to such a determination, although local legislation . . . may be involved." *Id.*

> diplomacy and war. Suit in this Court was provided as an alternative. . . .

Amidst growing national alarm over domestic shortages of affordable energy, Louisiana's statutory scheme betrays, on its face, the same attempts at parochial profiteering that the Federal Constitution was designed to prevent. This controversy between the plaintiff states and Louisiana invites the Court to address once again, in the first decade of the Nation's third century, the same constitutional issues present at the birth of the Republic. These primal questions — the role of federal law and freedom of commerce among the states — are uniquely suited for resolution by the Court. Under its ample precedents, Louisiana's commercial adventure can and should be found facially offensive to the Constitution's commands.

CONCLUSION

For these reasons, and for those appearing in their brief in support of exceptions and their brief in support of the motion for judgment on the pleadings, the plaintiff states urge that their exceptions be sustained and that the Court enter a decree granting judgment as prayed for in the complaint.

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APPENDIX A

Summary Responses of the Plaintiff States to the Defendant's Contentions

Many of the contentions made by the defendant in its brief of December 5, 1980, have already been answered authoritatively by decisions of the Court, findings of the Special Master, or earlier briefs of the plaintiff states. For the convenience of the Court, the plaintiff states provide below summary responses to these contentions with references to where they have been answered previously.

Contention of the defendant:	Response of the plaintiff states:
1. The plaintiff states do not seek relief for themselves or other natural gas consumers. Brief at 8.	1. Commission orders require the pipeline company taxpayers to refund the First Use Tax if it is held unconstitutional. Exceptions at 12-13 & 13 n.4.
2. The Eleventh Amendment prevents the plaintiff states from demanding refunds. Brief at 9-10.	2. The Eleventh Amendment does not apply to original actions between states. Reply to Exceptions at 7. *See also Principality of Monaco v. Mississippi,* 292 U.S. 313, 328-29 (1934).
3. The plaintiff states have not denied that Louisiana's state court tax refund procedure is an adequate remedy. Brief at 11.	3. The plaintiff states have no remedy in state court. Reply to Exceptions at 8-12; Report of Special Master at 17-18.
4. The plaintiff states have not denied that "the issues tendered here may be litigated" in Louisiana courts. Brief at 11.	4. The plaintiff states cannot litigate these issues in Louisiana courts. Reply to Exceptions at 11.
5. There is a "total identity" of the issues here and those raised by the pipeline companies in the state court tax refund cases. Brief at 11.	5. The constitutional issues in this case were known to be substantial during the legislative hearings on the First Use Tax and had been discussed by commentators before acceptance of this original actions; thus, it is not surprising that the pipeline companies are pressing similar issues.

Contention of the defendant:	Response of the plaintiff states:
6. The plaintiff states "have not met the extremely high burden of documenting the utility and propriety" of a decision on the pleadings. Brief at 14.	6. If the plaintiff states are correct as a matter of law in their contentions, considerations of "utility and propriety" are irrelevant to a decision in their favor. The Special Master expressly found that two of the issues presented could be resolved on the pleadings. Report of Special Master at 21 & 29.
7. The plaintiff states have not atempted "to show compliance with the accepted standards" for granting a motion under Rule 12(c) of the Federal Rules of Civil Procedure. Brief at 15.	7. The rule does not specify any standards for granting a motion for judgment on the pleadings; to the extent the defendant articulates a standard, Brief at 16, the plaintiff states have met it fully. Brief in Support of Motion for Judgment on the Pleadings at 39-41.
8. The plaintiff states have not pointed to a single material fact admitted by the defendant in its answer. Brief at 17.	8. None of the "facts" proffered by the defendant are material to the motion for judgment on the pleadings. *See* Reply to Defendant's Proffer and the appendix thereto. On the contrary, all of the material facts to its disposition are undisputed. *See* Response of Pipeline Companies to Defendant's Proffer pt. III.
9. Summary disposition should not be used to resolve "constitutional issues" of "high economic importance" or of "great economic importance." Brief at 18-19.	9. Many constitutional issues of national importance have been decided summarily, including cases involving the constitutionality of state tax schemes and those within the Court's original jurisdiction. *See, e.g., Boston Stock Exchange v. State Tax Commission,* 429 U.S. 318 (1977); *South Carolina v. Katzenbach,* 383 U.S. 301 (1966).

Contention of the defendant:	Response of the plaintiff states:
10. Summary disposition is never appropriate in Supremacy Clause and Commerce Clause cases. Brief at 19-20.	10. The Court has decided otherwise. *See, e.g., Douglas v. Seacoast Products,* 431 U.S. 265, 271-72 (1977); *Boston Stock Exchange v. State Tax Commission,* 429 U.S. 318 (1977).
11. The Court may not invalidate a state law on the basis of its reading of the statute and legislative history. Brief at 21 n.14.	11. This is incorrect. The Court often invalidates a state law on the basis of its reading of it and its legislative history if that reading indicates the statute is unconstitutional or contrary to federal law. *See, e.g., Williams v. Rhodes,* 393, 23 (1968).
12. Summary disposition is never appropriate in original actions. Brief at 23-25.	12. The Court has decided otherwise. *See, e.g., South Carolina v. Katzenbach,* 383 U.S. 301 (1966); *United States v. Louisiana,* 363 U.S. 12 (1960); *United States v. Texas,* 339 U.S. 702 (1952); *United States v. Louisiana,* 339 U.S. 699 (1952); *United States v. California,* 332 U.S. 19 (1947); *Kentucky v. Indiana,* 281 U.S. 163 (1930).
13. The Special Master and the parties should be given some guidance from the Court on how these problems of statutory construction, interpretation, and application are to be developed and resolved. Brief at 25.	13. The facial unconstitutionality of the First Use Tax is apparent from the language of the statutory scheme and is confirmed by its legislative history; there is no necessity for the Court to comply with the defendant's request for an advisory opinion to the Special Master.

Contention of the defendant:	Response of the plaintiff states:
14. The legislative history of the First Use Tax discloses legislative motive but not legislative intent. Brief at 25 n.16.	14. Statements of the draftsman of a proposed bill as to his understanding of its nature and effect, made at committee hearings, have been accepted as indicative of legislative intent. *Davies Warehouse Co. v. Bowles,* 321 U.S. 144 (1944). *See also Stonite Products Co. v. Melvin Lloyd Co.,* 315 U.S. 561 (1942).
15. An authoritative construction of the First Use Tax by Louisiana courts is needed before the Court can decide this case. Brief at 26.	15. The defendant has offered no plausible construction of the First Use Tax that warrants further delay of this case in state courts; the language of the statutory scheme is clear and is confirmed by the verbatim legislative history.
16. Many of the OCS gas purchase contracts may reveal that the product purchased is refined gas, not unprocessed gas. Brief at 28.	16. The Special Master found that "FERC had previously accepted contracts that provided that the processing involved and the tax on it were properly considered costs of producing liquid and liquefiable hydrocarbons, not properly to be borne by consumers of the natural gas." Report of Special Master at 28. As a matter of law, processing does not interrupt the flow of natural gas in interstate commerce, and it is not relevant to resolving the Supremacy Clause issues.
17. Underwater pipelines have massive environmental impact on Louisiana shorelines. Brief at 30.	17. As a matter of law, protection of the environment will not justify a Supremacy Clause violation or discrimination against interstate commerce.

Contention of the defendant:	Response of the plaintiff states:
18. The interstate movement or transportation of natural gas "arguably commences at the tailgate of the processing plant." Brief at 33.	18. "In view of the continuous movement of the gas, this seems a doubtful interpretation, but it hardly helps Louisiana in any event since the movement from the outer continental shelf across the state boundary and up to the processing plant would itself seem to be an interstate journey." Report of Special Master at 32. *See California v. Lo-vaca Gathering Co.*, 379 U.S. 366, 369 (1965).
19. The Special Master recommended that an evidentiary hearing be held before any constitutional issues could be resolved. Brief at 34.	19. The Special Master stated that two issues could be decided on the pleadings. Report of Special Master at 21 & 29.
20. The Report of the Special Master supports the defendant's contention that "authoritative delineation of the meaning or scope of the First Use Tax statute by the Louisiana courts" is necessary in this case. Brief at 34.	20. This is not accurate. The Special Master rejected all of the defendant's jurisdictional, procedural and prudential objections, including the call for abstention. Report of Special Master at 10-20.
21. The plaintiff states "appear to have abandoned their 'flat prohibition' argument in their latest brief." Brief at 36.	21. The plaintiff states have not abandoned any argument. *See* Exceptions at 36-38 (discussing the plaintiff states' reliance on *Michigan-Wisconsin Pipeline Co. v. Calvert*, 347 U.S. 157 (1934)).
22. The definition of interstate commerce in the Natural Gas Act differs from its definition for Commerce Clause purposes. Brief at 37.	22. This contention was flatly rejected by the Court in *Interstate Natural Gas Co. v. FPC*, 331 U.S. 682, 688 (1947) (citing cases).

Contention of the defendant:	Response of the plaintiff states:
23. "Each prong of the four-part [Commerce Clause] test depends upon factual proof of the relevant economic realities." Brief at 38.	23. A state taxing statute must meet *each* of the four Commerce Clause tests and such determinations have been made in the absence of a record. *See, e.g., Boston Stock Exchange v. State Tax Commission,* 429 U.S. 318 (1977) (discrimination against interstate commerce).
24. The plaintiff states have "apparently conceded" that the First Use Tax meets the "substantial nexus" and "fair relation" test. Brief at 39.	24. No such concession has been made. *See* Brief in Support of Motion for Judgment on the Pleadings at 9 & 9 n.9.
25. A factual dispute about one Commerce Clause requirement renders unsuitable a judgment on the pleadings with respect to another of the factors. Brief at 40.	25. The four tests are independent, and all must be satisfied to sustain the constitutionality of the First Use Tax. *See Department of Revenue of Washington v. Association of Washington Stevedoring Companies,* 435 U.S. 734, 750 (1978).
26. The author of a note in the Washington University Law Quarterly has concluded that the First Use Tax does not violate the Commerce Clause. Brief at 40 n.19.	26. The note actually concludes that because the First Use Tax seeks compensation for the extraction of resources from foreign citizens, it violates the Commerce Clause. 58 Wash. U.L.Q. at 357-58; 361-62. The note also finds that the tax interferes with federal authority under the Natural Gas Act. *Id.* at 362 n.102.
27. The defendant's answer states that the First Use Tax is not applied to imports. Brief at 43.	27. By its terms, the First Use Tax is applicable to gas imported from abroad because the United States does not levy an import taxes upon gas from abroad. *See* La. Rev. Stat. Ann. § 47:1303A (West Supp. 1980).

Contention of the defendant:	Response of the plaintiff states:
28. Actuality of operation may show the First Use Tax to be a compensating tax. Brief at 43.	28. Actuality of operation, *i.e.*, the exemptions, credits, and anti-passback features of the First Use Tax scheme, already show that the scheme lacks the equality that must exist for a true compensating tax. *See Henneford v. Silas Mason Co.*, 300 U.S. 577 (1937).
29. Louisiana residents who are the ultimate consumers of OCS gas subject to the First Use Tax do pay it. Brief at 43.	29. This assertion ignores the exemption, credit, and anti-pass-back provisions of the scheme, as well as the legislative history which confirms that the scheme was designed to wholly insulate in-state interests from any effect from the First Use Tax.
30. The environmental "burdens suffered by Louisiana . . . are indeed great." Brief at 44.	30. Environmental concerns cannot save a preempted or discriminatory statute. In addition, the transmission of gas from within Louisiana's three-mile limit causes the same problems, yet it is exempt from the First Use Tax.
31. The possibility of interference with the Natural Gas Act is not enough to invalidate the first Use Tax on Supremacy Clause grounds. Brief at 46.	31. The real issue, which the defendant ignores, is whether it has intruded upon an area reserved for federal regulation, and it has. *Northern Natural Gas Co. v. State Corporation Commission of Kansas*, 372 U.S. 84, 90-93 (1963); *Natural Gas Pipeline Co. v. Panoma Corp.*, 349 U.S. 44 (1955).

Contention of the defendant:	Response of the plaintiff states:
32. There must be a showing of the existence of contracts declared to be unenforceable for § 1303C of the First Use Tax to have any effect. Brief at 47-48.	32. No such language appears in § 1303C; the Special Master recognized the existence of such contracts (Report of Special Master at 11-12 & 12 n.11); and the relevant issue is intrusion into an area reserved for federal regulation.
33. The Commission can accommodate itself to the First Use Tax; therefore, no Supremacy Clause violation exists. Brief at 48.	33. The issue of possible accommodation is irrelevant; because the tax impinges on the Commission's authority, it must fall.
34. The Commission may authorize the deletion of reimbursement provisions. Brief at 48.	34. The Commission's orders do not delete any reimbursement provisions or even remotely suggest that the First Use Tax should be passed along to consumers.
35. The defendant included § 1303C in the statute merely to make it clear that the First Use Tax was not a tax on processing. Brief at 49.	35. This eleventh-hour suggestion is utterly at odds with the language of the statutory scheme and its verbatim legislative history.
36. Evidence of legislative deliberation will show that no intent to interfere with the Commission was intended. Brief at 49.	36. The verbatim legislative history demonstrates beyond dispute that the First Use Tax was designed to be passed-on. Evidence of "legislative deliberation" is inadmissible.
37. "No supremacy clause issue is involved until the federal enactment, as administered, purports to prohibit the enforcement of the statute." Brief at 50.	37. The Court has found otherwise. *Northern Natural Gas Co. v. State Corporation Commission of Kansas*, 372 U.S. 84, 90-93 (1963).

Contention of the defendant:	Response of the plaintiff states:
38. "The Natural Gas Policy Act (§ 110) reflects congressional anticipation of state enactment of taxes which might have an impact on the price of natural gas to be paid by the ultimate consumer." Brief at 51.	38. Section 110 of the NGPA permits pass-through of certain severance taxes; however, the First Use Tax is not imposed on the severance of Louisiana's natural gas and, indeed, proclaims it is not a severance tax.
39. "Natural gas" is not in a state suitable for marketing until "processing" is completed. Brief at 52-53.	39. The accuracy of this assertion is irrelevant; in any event, the exemption in the Natural Gas Act is for "production or gathering," not "production or processing," and the former encompasses only the physical aspects of production. *Northern Natural Gas Co. v. State Corporation Commission of Kansas,* 372 U.S. 84, 89-90 (1963); *Phillips Petroleum Co. v. Wisconsin,* 347 U.S. 672, 678-81 (1954).
40. The defendant is prepared to show that certain of the "uses" taxed are not within the comprehensive federal regulatory scheme. Brief at 53.	40. This question admits of no proof. As a matter of law, none of the uses fall outside the Natural Gas Act, as amended.

APPENDIX B

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No. 83, Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

STATE OF MARYLAND,
STATE OF ILLINOIS,
STATE OF INDIANA,
COMMONWEALTH OF MASSACHUSETTS,
STATE OF MICHIGAN,
STATE OF NEW YORK,
STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,
STATE OF WISCONSIN,

Plaintiffs,

v.

STATE OF LOUISIANA,

Defendant.

BEFORE THE SPECIAL MASTER

REPLY OF THE PLAINTIFF STATES TO THE DEFENDANT'S PROFFER OF PROOF

The State of Maryland, the State of Illinois, the State of Indiana, the Commonwealth of Massachusetts, the State of Michigan, the State of New York, the State of Rhode Island and Providence Plantations, and the State of Wisconsin, by their undersigned attorneys, file this re-

sponse to Louisiana's proffer of proof and state that the proffer demonstrates that the plaintiffs' motion for judgment on the pleadings is ripe for favorable adjudication because there is no dispute as to any material fact, and thus the plaintiff states are entitled to judgment as a matter of law.

INTRODUCTION

At the preliminary conference held on March 21, 1980, the Special Master admonished Louisiana not to file a disingenuous and irrelevant proffer that betrayed a motive to delay the resolution of this case. Transcript of Informal Discussion at 96 (Mar. 21, 1980). Nevertheless, the defendant has disregarded the Special Master's warning and filed a proffer that contains no illustration of relevance or materiality, none of the supporting exhibits Louisiana promised, and for the most part conjures up disputes on issues not pressed by the plaintiffs in their motion for judgment on the pleadings.[1]

For example, of the defendant's 116-page submission, only thirteen pages (¶¶ 86-116 at 90-101; ¶¶ 124-31 at 107-09) purport to concern themselves with issues raised in the plaintiffs' motion, and the statements made on these thirteen pages are either irrelevant or not facts but *legal* argument flowing from faulty *legal* premises. On the other hand, more than sixty pages are expressly devoted to issues not pressed in the plaintiffs' motion (¶¶ 83-85 at 43-90; ¶¶ 119-21 at 103-06; ¶¶132-49 at 109-114) or to jurisdictional questions already decided by the Supreme Court when it granted the plaintiffs' motion for leave to file the complaint (¶¶ 150-54 at 114-16). Louisiana has also included numerous statements in its "basic facts" (¶¶ 4-7 at 5-7;), statutory facts" (¶¶ 73-75 at 35-40), and facts relating to natural gas (¶¶ 8-72 at 7-34), which amount to an attempt to supplement its presentation on issues that have nothing to do with the plaintiffs' motion for judgment

[1] The specific categorization that should be applied to each paragraph of the defendant's proffer appears as an appendix to this reply.

on the pleadings. *See, e.g.*, ¶¶ 63-72 at 29-34 (dealing with alleged environmental and economic conditions).

Louisiana's proffer abounds with legal conclusions and matters irrelevant to the case in its current procedural posture. In addition, many of its "facts" are subject to or have already been subjected to judicial notice, most notably the defendant's description of natural gas processing, *see, e.g., Phillips Petroleum Co. v. Wisconsin,* 347 U.S. 672, 675 (1954), details of government regulation, and the operation of the Louisiana tax.[2] In short, Louisiana's proffer presents no obstacles to an expeditious resolution of this case on the basis of the plaintiffs' motion for judgment on the pleadings. Therefore, the plaintiff states renew their request that the Special Master make a prompt recommendation to the Court that the plaintiffs' motion for judgment on the pleadings be granted.

ARGUMENT

JUDGMENT ON THE PLEADINGS IS APPROPRIATE.

In their motion for judgment on the pleadings, the plaintiff states demonstrate that Louisiana's first use tax contravenes the supremacy clause in two respects: (1) the first use tax amounts to impermissible state regulation which violates the Natural Gas Act, and (2) the tax is preempted by the Outer Continental Shelf Lands Act. The plaintiff states also urge that two commerce clause arguments are dispositive: (1) the first use tax discriminates on its face against interstate commerce, and (2) the tax violates the commerce clause because it is not fairly apportioned to any identifiable activity within the state, and this is apparent from the nature, terms, and operation of the statute. These contentions are purely legal ones. *See Douglas v. Seacoast Products,* 431 U.S. 265, 271-272 (1977) (affirmance of holding on motion for summary judgment

[2] Statistics of the type used in the defendant's proffer (*see, e.g.*, ¶ 10), are available from judicially noticeable published sources. *See, e.g.*, The Gas Supplies of Interstate Natural Gas Pipeline Companies 1976 (U.S. Department of Energy, July 1978).

that state licensure statute is unconstitutional under supremacy clause); *Boston Stock Exchange v. State Tax Commission,* 429 U.S. 318 (1977) (Court reversed judgment of dismissal entered upon motion and held statute invalid under commerce clause). More importantly, these claims can be decided in this case without any consideration of the many pages Louisiana devotes in its proffer to the supposed remedial purposes of the tax and the alleged adverse effects of OCS gas development.

(1) Supremacy Clause

Supremacy clause analysis, unlike most other areas of constitutional law, does not involve a balancing of competing interests or an inquiry into the nature or strength of the purposes served by the challenged state enactment. If the state law conflicts with or is preempted by federal law, it may not stand. The Supreme Court has already rejected the economic and environmental concerns repeated throughout Louisiana's proffer (most notably in ¶¶ 43-90) as a justification for interference with the regulatory scheme contained in the Federal Natural Gas Act. *See Northern Natural Gas Co. v. State Corporation Commission,* 372 U.S. 84, 93 (1963) ("We have already held that a purpose, however legitimate, to conserve natural resources does not warrant direct interference by the states with the prices of natural gas wholesales in interstate commerce."). *See also FPC v. Corporation Commission of Oklahoma,* 362 F. Supp. 522 (N.D. Okla. 1973), *aff'd,* 415 U.S. 961 (1974).

Nor are the proffered purposes of the Louisiana first use tax any justification for its attempt to contradict the express language and purpose of the Outer Continential Shelf Lands Act, particularly when it is obvious that Congress in that legislation and in the Coastal Zone Management Act has provided for the manner in which that State is to be compensated for its purported economic and environmental claims.[3] In fact, the plaintiffs' preemp-

[3] Even if these contentions were relevant, it is important to note that the flood of economic claims Louisiana alleges in its proffer stems more from that state's deliberate policy of

tion arguments are strengthened by Louisiana's proffer because the defendant's "facts" admit that the purpose of the first use tax is to compensate the state for a lack of OCS royalties and that the tax is aimed at OCS gas (¶¶ 49-51; ¶ 69).

(2) Commerce Clause

The economic and environmental "facts" Louisiana proffers also have no bearing on the commerce clause issues the plaintiffs press in their motion for judgment on the pleadings. The plaintiffs assert that the first use tax is *facially* discriminatory against interstate commerce, thus raising a purely legal challenge that the Court resolves without any inquiry into the legitimacy of the state interests asserted in justification of the discrimination.[4] For example, in *Philadelphia v. New Jersey*, 437 U.S. 617, 626 (1978), the Supreme Court said:

> This dispute about ultimate legislative purpose need not be resolved, because its resolution would not be relevant to the constitutional issue to be decided in this case. Contrary to the evident assumption of the state court and the parties, the evil of protectionism can reside in legislative means as well as legislative ends. Thus, it does not matter whether the ultimate aim of ch. 363 is to reduce the waste disposal costs of New Jersey residents or to save remaining open lands from pollution, for we assume New Jersey has every right to protect its residents' pocketbooks as well as their environment.

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undertaxation of its citizens and in-state businesses rather than from OCS activities. W. Vogley, Report of the Economic Working Group Outer Continental Shelf Task Force (May 1972). If Louisiana desires even greater gratuitous compensation, its recourse should be in Congress, not with the enactment of a clearly unconstitutional tax directed at interstate consumers of natural gas.

[4] Despite Louisiana's pretensions to the contrary, all of the OCS gas subject to the first use tax is, as a matter of law and legal precedent, in interstate commerce at the time all of the so-called taxable "uses" occur. *See* discussion *infra* at 7-9.

The purported economic and environmental "facts" Louisiana proffers also have no bearing on the fair apportionment issue the plaintiffs present in their motion. The key commerce clause issues are purely legal ones that emerge from the language and flow from the consequences of the first use tax statute. As noted in *Michigan-Wisconsin Pipeline Co. v. Calvert,* 347 U.S. 157, 170 (1954), and *Portline Pipeline Corp. v. Environmental Improvement Commission,* 307 A.2d 1, 33-34 (Me. 1973), *appeal dismissed,* 414 U.S. 1035 (1973), the constitutionally significant aspect of the Louisiana statute is that the tax attaches itself to the volume of natural gas shipped through the state and thus invites retaliatory taxation by other states.[5]

Finally, the commerce clause "fact" that Louisiana seems to stress most in its proffer (¶ 80) is the allegation that natural gas is not in interstate commerce when it moves from the wellhead, but only after the completion of processing.[6] But this "fact" is in truth a purely legal question that the Court has answered many times in a manner contrary to Louisiana's assertion. For example, in *California v. Lo-Vaca Gathering Co.,* 379 U.S. 366, 369

[5] In *Michigan-Wisconsin Pipeline Corp.,* the Supreme Court did not hesitate to disregard the ostensible statutory purposes of a Texas taxing scheme or its "beggared" statutory definition in order to find as a matter of law that the tax violated the commerce clause. In so doing, the Court observed that:

> The appellees place much emphasis upon the fact that Texas through these conservation and proration measures has afforded great benefits and protection to pipeline companies. It is beyond question that the enforcement of these laws has been not only in the public interest but to the commercial advantage of the industry. But, though this be an appealing truth, *these benefits are relevant here only to show that essential requirements of due process have been met sufficiently to justify the imposition of any tax on the interstate activity.*

347 U.S. at 163-64 (emphasis supplied).

[6] It should be noted that Louisiana earlier more frankly and correctly admits (¶ 77) that "[t]he commodity purchased at the well-head by natural gas companies is dedicated to interstate commerce by virtue of its origin in the Outer Continental Shelf . . . ."

(1965), the Court said that "the result of our decision is to make the sale of gas which crosses at any stage of its movement from wellhead to ultimate consumption 'in interstate commerce' within the meaning of the [Natural Gas] Act." Similarly, in *Michigan-Wisconsin Pipeline Co. v. Calvert,* 347 U.S. 157, 163 (1954), the Court noted that "[t]he entire movement of the gas, from producing wells through the Phillips gasoline plant and into the Michigan-Wisconsin pipeline to consumers outside Texas, is a steady and continuous flow."[7]

[7] *Michigan-Wisconsin Pipeline Co.* presents a strong analogy to the present case. For example, it foretells Louisiana's attempt (¶¶ 10-18) to distinguish this case by relying on the need to "process" the "raw gas" before "refined" or "dry" gas continues its journey in transcontinental pipelines. Similar activity failed to justify the Texas tax in *Michigan-Wisconsin Pipeline Co.:*

> The question presented is whether the Commerce Clause is infringed by a Texas tax on the occupation of "gathering gas," measured by the entire volume of gas "taken," as applied to an interstate natural gas pipeline company, where the taxable incidence is the taking of gas from the outlet of an independent gasoline plant within the State for the purpose of immediate interstate transmission. In relevant part the tax statute provides that "In addition to all other licenses and taxes levied and assessed in the State of Texas there is hereby levied upon every person engaged in gathering gas produced in this State, an occupation tax for the privilege of engaging in such business, at the rate of 9/20 of one cent per thousand (1,000) cubic feet of gas gathered." Using a beggared definition of the term "gathering gas," the Act further provides that "In the case of gas containing gasoline or liquid hydrocarbons that are removed or extracted at a plant within the State by scrubbing, absorption, compression or any other process, the term 'gathering gas' means the first taking or the first retaining of possession of such gas for other processing or transmission whether through a pipeline, either common carrier or private, or otherwise after such gas has passed through the outlet of such plant." It also prohibits the "gatherer" as therein defined from shifting the burden of the tax to the producer of the gas, and provides that the tax shall not be levied as to gas gathered for local consumption if declared unconstitutional as to that gathered for interstate transmission.

347 U.S. at 161 (footnote omitted).

Nor is Louisiana's detailed recital of the facts of natural gas processing in Louisiana and their importance to the development of natural gas production alter the conclusion that the gas is continuously in interstate commerce,[8] because it is well settled that "processing does not interrupt the continuous movement of the gas from the wellhead to consumer burner tips." *Deep South Oil Co. v. FPC*, 247 F.2d 882, 888 (5th Cir. 1957), *cert. denied*, 355 U.S. 930 (1958).[9] *See also Permian Basin Area Rate Cases*, 390 U.S. 747, 820 n.111 (1968) ("Nonetheless, [the Federal Power Commission (now succeeded by the Federal Energy Regulatory Commission)] asserted jurisdiction, we think properly, over the sale of casinghead gas under the contract.").

In summary, Louisiana's illusory "facts" to the contrary, its proffer of proof with respect to natural gas processing

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[8] The first use tax is levied on OCS gas which, by definition, is "commited or dedicated to interstate commerce." 15 U.S.C.A. § 3301 (18) (A) (West Supp. 1980). The tax does not distinguish between "raw" and "dry" gas; it is collected on "any natural gas." La. Rev. Stat. Ann. § 47:1303A (West Supp. 1980).

[9] In its proffer, Louisiana now admits (¶ 74) that contrary to the language of the first use tax, it cannot tax OCS natural gas on the basis of seven of the enumerated eight uses: "Absent such processing in Louisiana, none of the other enumerated uses would necessarily permit the imposition of the First Use Tax on any taxpayer." This concession is understandable in light of controlling precedent from this Court. Illinois Natural Gas Co. v. Central Illinois Public Service Co., 314 U.S. 498, 503-04 (1942) ("point at which title and custody of the gas pass to the purchaser without averting its movement to the intended destination does not affect the essential interstate nature of the business"); Chicago Board of Trade v. Olsen, 262 U.S. 1, 34 (1923) (delivery into storage, even if commingling occurs, "does not take away from the interstate character of the through shipment."); Stafford v. Wallace, 258 U.S. 495, 515 (1922) (measurement of gas is merely an incident to the current of commerce that is both essential to and inseparable from the transportation of the gas); State Corp. Comm'n v. Wichita Gas Co., 290 U.S. 561, 563 (1934) (transportation or delivery by pipeline company of natural gas originating out-of-state is interstate commerce).

does not create a legitimate fact question.[10] As a matter of law, the OCS natural gas being exorbitantly taxed by Louisiana is in interstate commerce.

CONCLUSION

It is apparent that whatever the purposes and justifications of the first use tax, they do not require the Special Master to delay this case with needless evidentiary hearings when the issues the plaintiffs press in their motion *must* be decided without regard to Louisiana's alleged facts.

The Special Master has generously given Louisiana every opportunity to come forward with the kind of facts needed to justify an evidentiary hearing. Instead, the defendant has attempted to cast a smokescreen around the issues pressed by the plaintiff states at this point in the proceedings. Rather than aiding resolution of this case, Louisiana's lengthy and largely irrelevant proffer has shown itself to be a device to delay the ultimate outcome of this case while the defendant, without right, continues to extract from the plaintiff states and their citizens in excess of one-quarter billion dollars annually. Far from justifying an evidentiary hearing, Louisiana's proffer is a compelling reason for the Special Master to act favorably and with dispatch on the plaintiffs' motion for judgment on the pleadings.

Respectfully submitted,

[signatures deleted]

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[10] The plaintiff states should note that they disagree with the accuracy of much of what Louisiana says in its proffer. Thus, while the plaintiffs vigorously urge that no *material* facts are in dispute and that no evidentiary hearing is appropriate, it is clear that the hearing requested by Louisiana, if granted, would be protracted.

APPENDIX

In 154 paragraphs spread across 116 pages, Louisiana has brought forth nothing that suggests the inappropriateness of judgment on the pleadings. Indeed, by conjuring up false issues, harkening back to jurisdictional questions that have already been decided, and in other obvious ways, the defendant has defied the Special Master's warning against "present[ing] a submission which would not be helpful towards building a hearing." Transcript of Informal Discussion at 95 (Mar. 21, 1980). In light of Louisiana's proffer, the plaintiff states urge the Special Master "to go ahead on the motions [for judgment on the pleadings]." *Id.*

As the plaintiff states indicate in the text of their reply, not a single paragraph of the defendant's submission raises a dispute as to any fact material to the issues pressed in their motion. Thus, the paragraphs of Louisiana's proffer may be characterized as follows:

I.

PARAGRAPHS THAT DEAL WITH ISSUES *NOT* PRESSED IN THE MOTION FOR JUDGMENT ON THE PLEADINGS.

Paragraphs	Pages	Subject
4-7	5-7	Substantial nexus and/or relation of tax to services provided tests — commerce clause
11	8	"
13-18	9-11	"
24-28	13-16	"
29-35	16-18	"
41-52	21-24	"
63-72	29-34	"
73-74	35-40	"
83-84	43-61	Substantial nexus test — commerce clause.
85	61-90	Relation of tax to services provided test — commerce clause.
119-21	103-07	Contracts clause claim.
132-45	109-13	Equal protection clause claim.
146-49	113-14	Import-export clause claim.

II.

PARAGRAPHS THAT DEAL WITH JURISDICTIONAL ISSUES ALREADY DECIDED ADVERSELY TO LOUISIANA.

Paragraphs	Pages	Subject
150-54	114-16	Legal issues relating to jurisdiction and standing.

III.

PARAGRAPHS THAT STATE LEGAL CONCLUSIONS, MOSTLY UNFOUNDED, NOT FACTUAL ISSUES.

Paragraphs	Pages	Subject
1-3	4-5	Legal conclusions about the first use tax and interstate commerce.
7	7	Purported legal justification for tax.
36-40	18-20	Statements that may all be derived from pertinent legislation.
53-61	24-28	"
73-74	35-40	Statements of legal questions.
76-154	40-116	Legal conclusions about commerce clause, supremacy clause, equal protection clause, import-export clause, and jurisdictional questions.

IV.

PARAGRAPHS THAT CONTAIN ALLEGATIONS IRRELEVANT TO JUDGMENT ON THE PLEADINGS.

Paragraphs	Pages	Subject
8-18	7-11	OCS production activities.
22-23	13	Contractual arrangements.
25-28	13-16	Natural gas as an energy source.
29-35	16-18	Processing
36-40	18-20	Pricing and marketing.
43-52	21-24	Purported justifications for the tax.
62	29	"
63-72	29-34	Relation of tax to services provided test — commerce clause.

V.

PARAGRAPHS THAT CONTAIN ALLEGATIONS SUBJECT TO JUDICIAL NOTICE.

Paragraphs	Pages	Subject
8-10	7-8	Outer Continental Shelf.
12	9	"
15-17	10-11	Natural gas production.
19-21	11-13	Contractual arrangements.
24-26	13-14	Natural gas as an energy source.
29-30	16-17	Natural gas processing.
36-39	18-20	Pricing and marketing.
75	40	No definitive interpretation of tax by Louisiana Supreme Court.

APPENDIX C

Hearings on H.B. 768

Before the House Committee on Ways and Means

(Hearing of June 5, 1978)

(Mr. Leach) We have Representative Tauzin, Representative Benny Bagert and Representative Raymond Laborde to handle two of the four bills considered in the package of the first use tax.

This is HB 1128, we'll go on for amendments on that Mr. Tauzin. Mr. Coco will give the committee a brief on HB 1128, this is by Representative Bagert.

(Mr. Coco) The proposed law would provide a tax credit against those taxes owed to the state by those electric generating plants and natural gas distributions regulated by a municipality or by the Louisiana Public Service Commission if their fuel costs are increased as a result of the passing of HB 768, the first use tax. It will provide that the secretary of the Department of Natural Resources shall promulgate rules for determining the amount of tax credit granted and for the administration of this Act.

(Mr. Scogin) Mr. Chairman and members of the committee and Mr. Henderson, I think it's passed out for your use during the presentation of this bill, a copy of what the engrossed bill would look like if these amendments that would submit it in conjunction with the bill were adopted in order that the particular bill is underlined the new language which is incorporated into the bill by the amendment. I initially filed this bill after I learned that there was a substantial likelihood that the proposed first use tax would pass for the reason that it would affect my community and to all public service in their cost of gas and which cost is alternately passed on to residential and business users of natural gas and electricity by way of the fuel adjustment according to our rate structure.

(Mr. Leach) Would it please the committee for us to go ahead and that Mr. Bagert would propose to explain the bill as amended to go ahead and get the amendments adopted. I do not think that there would be any objections to these amendments if this is going to be Mr. Bagert's bill. He's all but rewritten the bill with the amendments.

Mr. Champagne did you have a question?

(Mr. Champagne) I have a question but probably you should explain it further, then I'll ask it.

(Mr. Leach) Alright. Is there any objection then for my offering up the amendments which have been passed out to you.

Mr. Sour.

(Mr. Sour) I don't object to the amendments any more than I object to the bill being heard at this time. Couldn't we be possibly wasting time in this committee hearing this bill and the other bill yet unheard and if this one doesn't pass?

(Mr. Leach) Mr. Sour has questioned the scheduling of this bill prior to the bill levying the first use tax. The authors of the bill came to us a couple of weeks ago about scheduling and requested that we hear these two bills on the day prior to hearing the two that are scheduled for tomorrow. One being the actual levy of the tax and I'm really not familiar with that as a dedication and to the trust for state debt. If any House members request we schedule their bills according to what they ask for. If the committee this morning would want to postpone these until the other bills have been heard that would be the pleasure of the committee. We have scheduled bills upon request the House members at the time they have asked for them whenever possible. So, if you would like to move that we defer action Mr. Sour you would be in order to do so.

(Mr. Sour) Well, my thinking is that we just have a good number of bills and really if we hear a bill ahead of them, all predicated on a bill we're going to hear later which has to go through the entire process the Senate and everybody else, we may be just putting off bills that should be hears on their own, not one here dedicated to passage of another one that's yet unborn and yet unheard.

(Mr. Leach) Mr. Sour now moves that we defer hearing HB 1128 as scheduled this morning as announced in the agenda. We will now have discussion of it. I believe Mr. Guidry was first.

Mr. Laborde.

(Mr. Laborde) This bill says in the event that HB 768 is an act of the first use tax?

(Mr. Sour) Yes.

(Mr. Leach) Mr. Guidry.

(Mr. Guidry) Mr. Chairman the biggest issue in the first use tax debate will probably be passed on and not affect the consumers in Louisiana and it would be absolutely pointless to even hear the bill if that were not cleared before we heard it and that's the reason I would assume that we're doing this now in this manner.

(Mr. Leach) Mr. Champagne.

(Mr. Champagne) I would direct this to the author of the other bill. Is there any way why this couldn't be included in the bill?

(Mr. Leach) Mr. Tauzin would you answer the question as to why this is not included with the actual levy of the tax?

(Mr. Tauzin) Yes sir. Whether Louisiana decides to grant credit to the people in Louisiana who have impact on the first use tax is a separate issue. Mr. Guidry is absolutely correct, however, before you hear the tax. I think it would be wise for you to make the decision that you want to or don't want to give credit to the Louisiana users. The bills are separate by different authors and frankly I think for the purposes of the constitutionality of the tax proposal itself we ought not have any relationship in the same bill.

(Mr. Leach) Would you just tell Mr. Champagne why this is not incorporated in the tax bill itself. That's the only answer we need right now.

(Mr. Tauzin) I think I explained that. It's a question of constitutionality.

(Mr. Leach) A question of constitutionality.

Mr. Scogin.

(Mr. Scogin) What I'd like to know Mr. Tauzin is that if indeed we do pass the other bill and indeed do pass this one if some determination has been made to relate the physical impact to the other bill. If it is with no doubt would be a reduction, would it not?

(Mr. Tauzin) Yes sir. We estimate that somewhere between one hundred seventy and, two hundred million degenerate despite the credit.

(Mr. Scogin) In other words they digure that since floating around, is after something like this has occurred.

(Mr. Tauzin) Yes sir.

(Mr. Scogin) Let me ask you to phrase it the other way then. If we didn't pass these credits were not granted what would be the figure?

(Mr. Tauzin) It would be closer to about two hundred ten or two hundred twenty million.

(Mr. Scogin) Will, the reduction amount to some thirty million?

(Mr. Tauzin) It all depends. There are a lot of factors in here as to how the credit work. It would be somewhere between ten and twenty-five million.

(Mr. Leach) Did you have another question?

(Mr. Champagne) Yes, I have another one on constitutionality. Don't you think there's also that probability that say the other tax passed declared constitutional but this one declared unconstitutional?

(Mr. Tauzin) This bill is . . . with the help of the people who work with us on the first use tax only has an affect if indeed you have a first use tax and no credits at all until they have a first use tax.

(Mr. Champagne) I understand all that but it's not clear in my mind about the constitutionality of it. If it's the constitution in one case where we can make a side issue and maybe sneak the other one through but then this one would say well now, if there's a problem your problem is with the two together you might have a constitutionality problem.

(Mr. Tauzin) If you put the two together you've given the people who want to defeat it a chance to go to court and say look they've passed the act to just cover people outside Louisiana.

(Mr. Sour) Is it common practice to say that next year we might vote a sales tax, let's start hearing some bills this year on exclusions. Who all are we going to exclude from the sales tax next year when it pass or next week or next month? I just think that the committee could be put into a position to look rather foolish. Of course maybe some of you all are all for concluding that if you vote on conclusion first use is going to pass. I hate to think that the press has already set the type on that before we ever hear it on this committee.

(Mr. Leach) Mr. John John.

(Mr. John John) I'm not being a lawyer but passing this bill predicating on the other bill and we know that the other bill will be tested in court. Could this be a factor that the intent was directly to exclude Louisiana. (not clear)

(Mr. Tauzin) The only concern is in what order they come in. The attorneys who helped us on it are not concerned about the order they are concerned about the order and I think Mr. Bagert's concerned about the order only because it will bring you the first use tax after you've been satisfied that the credit bills have been heard by you and you want to give those credits to people in Louisiana that you're given. I think it's only fair to this committee and the legislature for them to know that you'd take care of that problem if you want to prior to looking at the first use tax.

(Mr. ?) We don't want to levy the first use tax and have it affect people in businesses in Louisiana.

(Mr. ?) As far as I'm concerned I don't want the first use tax if it's going to do that and that's why I initially authored this bill and then got together and worked it out with Billy.

(Mr. ?) I can understand that very well sir and believe me I only vote for it myself with intention but I do think you should try the legality of it and put another stumbling block in front of the possible passage of this bill.

(Mr. Leach) Is there any other committee member who has a question they would like to have answered? Mr. Sour.

(Mr. Sour) My question is Mr. Bagert and Mr. Tauzin, don't you think that Mr. John got right to the heart of the thing. Don't you think that it could possibly place the constitutionality of the first use tax if it's passed in jeopardy by saying that you proved conclusively ahead of time that you are excluding the people of Louisiana from this tax and you're going to definitely pass it on to out of state people?

(Mr. Bagert) I don't think the tax is so important that we have to have it even if it affects people in businesses in Louisiana. I think the most important thing is that if we do pass the tax, that we don't affect people in Louisiana and if they throw us all in the same hat, they'd say you did it this way and it was a scheme — fine. It wasn't a scheme when it started. All I intended when it started was to make sure that the elected . . . in my community weren't affected by it because their rates are high enough because of high fuel costs and I didn't want their fuel costs to get any higher. Actually there is no scheme. I don't think that the tax is something that is so important that we have to pass it without the assurance that certain people and businesses in Louisiana wouldn't be affected.

(Mr. Bagert) To further answer your question my bill is No. 1128 and we all are going to get filed chronologically. Billy is checking the number of his, but I know it isn't filed before mine.

(Mr. Leach) Mr. Guidry.

(Mr. Guidry) Gentlemen, I want to make it perfectly clear how I stand on this thing and that is simply that there is indeed a purpose in my voting on this first use tax in that I don't want it to affect the people of Louisiana and that we want to pass it on and that is not in fact our purpose that I'm against the whole thing and I think every one of us here is that way and how this committee hears this bill in what order I think has nothing to do with this. How the governor signs the bills may have some bearing on it, although I doubt it so I move that we just go along and hear the bill.

(Mr. Leach) Now we have a motion on the floor Mr. Guidry.

(Mr. Leach) The motion now is the Sour motion to defer hearing HB 1128 by Representative Bagert. Those in favor of deferring the hearing as moved by Mr. Sour vote yes, those opposed to deferring hearing will vote no and the secretary will call the roll.

(Mr. Leach) The vote is three in favor and eleven opposed. We will continue then with the hearing of HB 1228 for one set of amendments have been adopted at this time I offer for such amendments adding Representative Bel as coauthor and Representative Jackson. Is there any objection to that? The coauthored amendment is adopted.

(Mr. Leach) Mr. Champagne.

(Mr. Champagne) I have a question. I have some problem with setting up regulated by a municipality or by the Louisiana Public Service Commission. I'm sure you're aware that there is a bill to take a certain co-ops or something out from the controls of the Louisiana Public

Service Commission if that bill went into effect since we're talking about future bills. Would this eliminate them?

(Mr. Guidry) No. The additional language I think makes it perfectly clear that those co-ops would still enjoy the benefit of the credit that extends the credit to any other affected consumers. I think that would cover the contingency that you just raised.

(Mr. Champagne) You don't think there's another way we could skim this Chapter without doing it like that exactly?

(Mr. Guidry) No.

(Mr. Laborde) Mr. Bagert I have not completely digested the amendments and my question is — in my area for instance, and I'm sure there are other areas in the state and the town of Vinton buy the electric current from Gulf States Utilities Co. and that current is generated in the state of Texas. Wouldn't it in effect, Gulf States have some kind of loop hole to charge more money to the town of Vinton and would not be protected by the provisions of this bill?

(Mr. Bagert) If they generate in Texas then they will not have any increased cost as a result of Louisiana's first use tax.

(Mr. Laborde) Yes they will. We put that first use tax — everybody using gas outside of the state of Louisiana will have to pay the first use tax and I don't know but there may have been occasions where power is generated in Arkansas, Mississippi or maybe way up north and in case of an emergency some of that will have to be channeled down here. All these lines are interlocked throughout the country and I'm concerned about any electric power that's generated outside the state of Louisiana and pushed back to us they won't have to pay the first use tax our people would be subjected to it.

(Mr. Tauzin) The first use tax only covers activities associated with gas produced off Louisiana's coast is brought into Louisiana first and there is some activity with it in Louisiana. That gas is . . . by a pipeline company to a . . . gas. Maybe the pipeline companies own the gas by the time they produce it offshore in Louisiana. In about 15% of the cases the producers still own the gas and they own it until they actually process it and sell the dry gas off. But in the majority of the cases the pipeline company already owns the gas, brings it into Louisiana, processes it at the plants in Louisiana and then ships it into commerce. As I said, when they process it they extract liquids from it, about 5% liquids and about 95% is dry gas that's used by consumers. Of the dry gas that's used by consumers only 1½% of some of that stays in Louisiana. 98½% of it goes out of state and primarily the states of the northeast and the midwest. The concern that they have is about the Texas facility transporting electricity back to Louisiana is one that you needn't worry about. What we're talking about then is the mere 1½% of it stays in Louisiana. That is the subject of Mr. Bagert's bill. 1½% that's consumed in Louisiana either by a municipal generating plant or by a separate generating facility or by industry that we're using some of that gas. That's all we're talking about here and the credit should go under Mr. Bagert's bill as amended. These consumers will feel a direct impact of the first use tax upon their rates or upon their cost of gas. That's only a small amount Mr. Laborde and as I say it wouldn't affect . . .

(Mr. Laborde) I just used this case in particular because I'm familiar with it but I'm just wondering if maybe some other towns or cities along the borders of this state do not buy electric power from plants that are generated in other states and possibly some of this offshore gas could be going to them. We have a new facility being built in Lake Charles import liquified natural gas and all that gas coming into Lake Charles ought to be going to poor

midwestern states. This has nothing to do with the bill but I'm just using it as an illustration to show that these pipelines are connected all over the United States and might use the gas for a generating power in Wisconsin and at some time or another it will be channeled back to Louisiana. I think that's possible.

(Mr. Tauzin) The answer Mr. Laborde is that the bill provides a credit to the electric generating facility in Louisiana who feels an impact. If that should occur and I'm suggesting that . . . the electric generating facility regulating in Louisiana has a right to apply for the tax credit of any directing tax of (not clear) . . .

(Mr. Leach) Mr. Bruneau.

(Mr. Bruneau) Benny I have the same concern that you do. I'm not so much concerned though that whether the first use tax passes but I am concerned that if it does pass what the effect will be on the citizens of the state of Louisiana and on our locally owned industries. I'm looking at the severability clause of your bill and I frankly don't understand why there's a severability clause with respect to just one section of the law. How can you hold a part of this bill, bill No. 1128 unconstitutional?

(Mr. Bagert) Are you saying that the severability clause doesn't take into account the passage of—

(Mr. Bruneau) No it doesn't, I'm going to get to that. You're adding one section to the law and I don't see the effect of the severability clause when you're just adding one section to the law. Now this is my next question. Because I think if any part of this Section is held unconstitutional I think the whole section is going to be held unconstitutional. My fear with respect to all of this is that this is the one that's going to be held unconstitutional because it's a discriminatory thing on local people. This is the one that's going to be held unconstitutional and then we're going to be stuck with the first use tax on your own people. That's what really bothers me about the whole

thing. And my suggestion to that is to put that if this bill is ever made constitutional then the first use tax is repealed.

(Mr. Tauzin) Mr. Bruneau, the state of Louisiana has granted similar tax credits for a long long time to use it in. . . The most typical example is the gas severance tax . . . prior to even that time there were gas credits allowed to people in Louisiana. It's been a common practice and . . .

(Mr. Bruneau) Billy I'm aware of that. Was the constitutionality of any of those things ever contested?

(Mr. Tauzin) I don't believe. The reason is people who receive credits don't contest it.

(Mr. Bruneau) How about the people who don't receive credit?

(Mr. Tauzin) If those people go to court they are going to court because they want to attack the tax that taxes them without a credit. If I'm a taxpayer and I don't like the fact that somebody is getting credit I use that fact to attack the tax. It's never been done. All I can tell you Mr. Bruneau is that I think you're assuming that worrying about something that just not in our experience.

(Mr. Bruneau) That's the point I made to you. You tell me it's constitutional but nobody doesn't challenge it and I tell you that doesn't prove constitutionality one way or the other.

(Mr. Tauzin) What I'm suggesting Mr. Bruneau is that the taxpayer who is concerned about the fact that we granted somebody could get a credit . . . he's going to attack the fact that he's paying tax without a credit. If he wins that fact then the whole thing's over. If he loses that fight he's lost it that's it.

(Mr. Bruneau) No, he just go into court on all three of them. He's going to say it's discriminatory and that's a non-tax to the local people and I think the court then has

an option to throw out the local exemption and say the tax is good it's applied across the board.

(Mr. Bagert) This is what I understand that the first use tax is the tax on an activity and it does tax those people located here (people and businesses) who engage in that activity without any exemption. It taxes those people who . . . and process natural gas and then pass it on. It's not a question of discriminating, it taxes everybody who does and doesn't anybody who doesn't. Now just because we have another bill that provides a credit to the people who are affected by that tax and I don't think there's any great power. I don't think you're talking about Section 4 which is the severability clause which says "if one portion of this Act" you're talking the repealer clause.

(Mr. Bruneau) I'm talking about Section 5 that says "all laws or parts of laws in conflict herewith are hereby repealed."

(Mr. Bagert) The repeal of what laws are you worried about?

(Mr. Bruneau) Well actually I'm worried about the severability. This is what I'm worried about. Somebody goes to court, and they bring this up and they say Bill No. 1128 Act No. such and such by Mr. Bagert, bill No. such and such and Act No. such and such by Mr. Laborde and they say you've got to consider the totality of all these things together, okay, and the deter fact when you consider all of them together is the complete pass on them, correct?

(Mr. Bagert) If that argument is accepted, yes.

(Mr. Bruneau) Bill is right. The plaintiffs in the suit are going to be arguing for the unconstitutionality of the first use tax, however, suppose they make an argument about a discriminatory in everything else and somebody on the court says well in order to make it not discriminatory we just don't need local exemptions and they strike out the local exemptions as being the discriminatory part of the

tax. Gaining of the tax and no local exemption and that's my fear about it.

(Mr. Bagert) Then it shouldn't be the repealer clause in this bill Peppi that would scare you. It would seem to me that we would be afraid of the repealer clause in the tax bill.

(Mr. Tauzin) All I can tell you is that I think your fear is totally absolutely . . . The state of Louisiana had the right to grant a tax credit to any one of its citizens. We impose the taxes that we talked about during a credit review. We have a right to induce them to our own citizens if we want to and those citizens fall into a special category of citizens. We can't selectively give a tax credit to . . . No question about the state's right to grant a tax credit if he want to do it. What's going to happen in that court Peppi is that the court is even going to rule that these things are all part of one seam and that we can do it or we can't.

(Mr. Bruneau) I understand that Mr. Tauzin but you and I have been practicing law long enough to know that we don't know what a court is going to do.

(Mr. Bruneau) My question is this to Mr. Bagert and to Mr. Tauzin, will you all object to the . . . in the appropriate place and I'll let you all desire where the appropriate place is if you have no objections, it says that if the credit falls the tax falls?

(Mr. Bagert) I think you're looking at the wrong repealer clause and get . . . the repealer clause in this bill rather than the repealer clause in Tauzin's bill. That's the bill that you should remove the repealer clause from because if you remove the repealer clause from this bill just the opposite will happen. You and I have the same exact philosophy about this first use tax. That's not my tax and I'm not going to lose an ounce of sleep over it. The thing that I'm worried about is having the first use tax passed and not having this passed and I would suggest if you really think it out the place where you should remove the repealer clause would be in Tauzin's bill but not in

mine because if Tauzin's bill fails and mine passes then you have nothing.

(Mr. Leach) Mr. Scogin we need the bill explained now as you now have it.

(Mr. Scogin) Every electric generating plant, natural gas distributions, service municipally owned or regulated by the Public Service Commission . . . which is continued in amendment No. 5 says in every direct purchase of natural gas from the owner of the natural gas other than an owner of natural gas regulated by the municipality and state assumption shall be allowed to grant credit. Credit will work in identically the same fashion as the natural gas tax credit. Warrants will be issued by the Dept. of Revenue to those individuals who have cut additional costs as a result of any first use tax which may be levied. Those warrants can then be used to pay state taxes or to pay local taxes, municipal or parochial taxes or taxes of that nature. And of course ultimately those warrants when you give it to the municipality or we submit it to the state treasurer . . . I guess essentially that's all the bill does.

(Mr. Leach) Do you have a fiscal note as to what this exemption would cost if it is enacted and if the tax is enacted?

(Mr. Scogin) No sir.

(Mr. Tauzin) Roughly, a million dollars annually would amount to give credit to direct consumers . . .

(Mr. Leach) The tax credits would be issued to affected industry to qualify for this particular credit would be one they could use against any state taxes and you've stated also municipal or local. Would the state reimburse that municipality or that locality for that credit?

(Mr. Bagert) It would issue a warrant to the taxpayer and the taxpayer would then give the warrant to the tax recipient body and they pass the warrant.

(Mr. Leach) So it will be nothing from local government?

(Mr. Bagert) Correct.

(Mr. Leach) Mr. Bel.

(Mr. Bel) I'd like to make a motion. I move that we vote the bill favorably as amended.

(Mr. Leach) Mr. Bel now moves that the bill be reported favorably as amended. Is there any committee member who has a statement or a question they'd like to ask? Is there objection to the Bel motion? Is there any objection to reporting the bill favorably as amended? No objection. Then the bill will be reported favorably as amended. I'd like to state very quickly that the committee intends to hear all bills that were scheduled on the agenda today. The reason for not beginning at the top of the list was the fact that the authors of those bills were not in the committee room. They accepted no plan not to hear any bill and any information contrary is erroneous to since we've been waiting for the authors of the bills to be in the room when we called them.

(Mr. Leach) The committee clerk has passed out amendments to HB 1187. Mr. Coco would you go ahead and give the committee the brief on that.

(Mr. Coco) HB 1187 by Representative Raymond Laborde would provide a credit against severance taxes paid to the state or any taxes paid as a consequence of the first use tax. Further would provide that parish severance tax collections will not be affected.

(Mr. Leach) Mr. Laborde would you like for us to adopt the amendments and discuss . . . affect the bill? Mr. Ackal moves that the amendments as presented be adopted. If you'd like a discussion of them before the bill we will go through them. There are two sets of amendments, we'll ask Mr. Laborde to give us a general . . . of the bill and then we'll present each amendment separately and have it act upon. Mr. Laborde

(Mr. Laborde) Mr. chairman and members of the committee this bill attempts to correct the problem that Billy mentioned a moment ago about the 15% of producers

that own gas and will not be able to pass it on to the pipeline. I think it's a general concensus and I know it is mine. If the first use tax is passed it's going to be a passed on tax, no question about it. But I'm concerned here about the 50% which Billy showed you a moment ago that they will not be able to pass it all on and that's what this bill is going to attempt to correct to make sure if they're not able to then they will be reimbursed (not clear)

(Mr. Leach) Mr. Ackal

(Mr. Ackal) Mr. chairman I think we ought to go ahead and adopt the amendments because . . .

(Mr. Leach) Mr. Ackal has now moved that amendments 1, 2, 3 of the first set amendment No. 1, 2 of the second set be adopted. You have copies of these amendments so this is now open for discussion.

(Mr. Leach) Mr. Champagne moves a favorable adoption of amendment No. 1 is there objection? No objection, No. 1 is adopted. Is there any objection to the two sets of amendments being adopted at this time? Mr. Champagne now moves that the remainder of the first set and all of the second set of amendments now be favorably adopted. Is there any objection? No objection, then they stand adopted. The bill will be discussed by Mr. Laborde and Mr. Tauzin as amended. At the conclusion of the bill the committee will then instruct . . . whether or not additional work is needed by staff before the bill is reported.

(Mr. Tauzin) Mr. chairman one of the principle concerns is that we have when we look into the Laborde bill in discussing with the members of the industry was their concern that they wanted a tax credit pending a determination if they had a right to pass it. Many of them produced a contract — and that's 15% of the . . . 15% of the cases where producers still own the gas. The one that produces it inside Louisiana then he sells the dry gas. In that 15% of the cases many of the contracts provide that they can pass through to the pipeline company as much as 75% or more, in some cases 100% of any increased costs

that they have in processing it. In those cases the bill provides that if they have a right to pass it into the pipeline company they wouldn't get a credit. There concern is what happens until we get the right . . . we have a right to pass it or not. The bill provides this mechanism. When the producer pays the tax he immediately applies for the credit and he submits to the revenue department all documents that would indicate whether or not he has a right to pass his tax on to the pipeline company. If revenue determines that he can he so destructive that he can't. He is then given 30 days to appeal revenue's decision to the Board of Tax Appeals and that board acts that if it decides that it can pass it on he is not engaged to seek administrative or judicial authority to do that. If he does so, all during this period he gets a tax credit. If he goes to court all during the . . . he gets a tax credit. So then when he's finally determined that he's not entitled to the tax credit then he had a right to pass it on then he must reimburse all the taxes that is probably an amount passed on in the actual collection itself. The only interest he owes on it is the interest he collects. If he wins this case he'll go out and pass it on to the pipeline company. This bill provides by amendment that if the producer ends up being the bearer of the tax as a result of the failure of the provisions of the first use tax then he gets a credit too. If the first use tax doesn't work as we hope and expect it will if the producer ends up getting . . . because the pipeline company passes it back to him then he gets a credit for the taxes being used so he doesn't lose any money. This mechanism is self destruct and as I told you simply to satisfy the producers concern that the first use tax might not work. It doesn't work the way you want it to work. So we end up just taxing our producers and . . . That's the bill as amended. The only way the producers can get a credit in this case is to waive any rights or refunds from the first use so it doesn't get paid twice in the first use . . .

(Mr. ?) Is there any objection to the bill? Will the secretary call the roll

(Mr. Tauzin) In 1973 when we doubled the severance tax on natural gas we granted Louisiana citizens more of tax credits then the impact of that increasing severance tax was. We repealed the state property tax and reduced the state income tax, we reduced the state sales tax. When you add up the total of those taxes and credits given to Louisiana citizens those totals exceeded the amount of impact of the severance tax increases that we've had. We not only had a complete pass on we have extra pass on.

(Mr. ?) I meant though, like a tax credit to industry as an inducement. Every industry in the state didn't get that did they?

(Mr. Tauzin) The industries who got it were those that used natural gas that were subject to the severance tax. Same thing we're doing here.

(Mr. Leach) Mr. Bagert would you attempt to cover your bill and we will not interrupt for questions and then we'll have questions. Before you do that Mr. Bagert Mr. Scogin has a question.

(Mr. Scogin) Whether you realize it or not you're placing in the Dept. of Revenue and Taxation an added burden that it relates to determining the amount of the cost increase. Should it be limited to the amount increased in sales cost? Is it going to be difficult to determine one way or another or just how they are going to do that?

(Mr. Bagert) I don't think so Mr. Scogin. Before doing this I met with a fellow named Mr. Campbell at the revenue department. The method that would be used here would be identical to the natural gas tax credit and he advised me that there would be no problem with doing it that way. But, be that as it may, put an increased burden on the revenue department is occasioned by the passage of this bill. I'm sure that any additional cost would . . .

(Mr. Scogin) . . . the legislature would play no part in determining the amount of credit. Apparently the part of revenue taxation is going to be the one that determines it

not the legislature. I would be concerned as to whether or not it might be used as a catchall.

(Mr. Bagert) I think the amount of credit is whatever the amount of tax is.

(Mr. Scogin) Well, as Billy mentioned earlier there will be some in Louisiana where they will be affected of those producing within the state and it's going to be of some gray area.

(Mr. Leach) Mr. Bagert would you now explain your bill as amended.

(Mr. Bagert) Mr. chairman, I think by answering all the questions I tried to write and fully explained it, the only difference between this bill and the way I initially have it (cut off)

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

I, Jerry J. Guillot, Director of Committee Staff Services and Custodian of Committee Records, do hereby certify that on this day, September 8, 1980, that the foregoing is a true and correct copy of the transcription of a tape recording made at the June 5, 1978 Meeting of the House Committee on Ways and Means concerning House Bill No. 768 of the 1978 Regular Session of the Louisiana Legislature, and that the tape used for transcription was a tape used to record said meeting and that said tape has been in the constant possession of my office with the staff of the House Committee on Ways and Means.

/s/ JERRY J. GUILLOT
Jerry J. Guillot, Director
Committee Staff Services
Louisiana Legislative Council

Hearings on H.B. 768
Before the House Committee on Ways and Means
(Hearing of June 6, 1978)

Number 3 — is there a mechanism for a declaratory judgment?

Yes, sir.

All right, is that soley the option of the Revenue Dept. or would that be at the option of the taxpayer?

Actually, the way we provided in the bill the state of Louisiana is an indispensable party to the suits in reference so that even the state or any one of the parties should . . . since we have prosecutional issues at stake here. Under the present laws of the state of Louisiana, we are directed to . . . the state Supreme Court for declaratory relief on the issue.

So you, an individual could . . . . .

(Mr. Leach) Mr. Dawson, would you come up to the table and for remainder of the first use tax we would appreciate you representing the Revenue Dept. here today.

What I was questioning Billy about was the procedures that the Revenue Dept. could undergo to collect this tax. My appreciation to the tax would not pay to go in through a distraint proceeding to collect it. Right?

(Mr. Dawson) Well, there are several procedures we could use to collect the tax. One of them would be to go through our regular assessment procedure. Another method would be to file suit to enforce it.

(Mr. ?) All right, now that would be a declaratory judgment procedure.

(Mr. Dawson) No, not necessarily. We have a normal suit process like you file a suit, to collect the taxes.

Well, would the taxpayer have the option to file a declaratory judgment?

(Mr. Dawson) The taxpayer would also if we do an audit on someone and come up with an amount that we say is

due in deficiency or if the taxpayer himself, through his bookkeeping procedures, were to come up and say that the state claimed we owe this amount of money, we don't think we do, they could pay it under protest and file suit against us.

They would have to pay the tax under protest?

(Mr. Dawson) Well, that would be one that they could file a declaratory judgment suit as you—

Can the taxpayer file a declaratory judgment suit on this particular bill as written?

(Mr. Dawson) I think they probably could, questioning the constitutionality which I understand is the big question here. They could file a declaratory judgment asking the court to determine the constitutionality.

In the event that a taxpayer did that, will you then not have to pay the tax pending the suit or could the Revenue Dept. go ahead and proceed by other avenues and force him to pay the taxes?

(Mr. Dawson) If a suit is filed our policy is that we go ahead and litigate the suit and make a determination of whether our taxes are due or not.

(Mr. Leach) Any other questions Mr. Bruneau?

(Mr. Bruneau) No, sir.

(Mr. Leach) All right. Mr. Tauzin, I'd like to ask this question. Perhaps it should have been asked another day — your bill yesterday but we're down to the actual . . . of the tax now.

(Mr. Tauzin) Yes, sir.

(Mr. Leach) You mentioned the FDRC hearing on the application by the transmission companies to FDRC and you are allowing ample time in the bill for the application to be processed and receive a ruling.

(Mr. Tauzin) Yes, sir.

(Mr. Leach) If they are allowed to increase their rates to pass through the tax that is the intent of your bill?

(Mr. Tauzin) It's more than that.

(Mr. Leach) All right, if they're allowed to do it and everything's proceeding orderly. Now when they're told they cannot increase their — if they should be told they cannot increase their rates and therefore they would have to absorb this — I have been informed that the transmission companies, pipeline companies, have certain contracts from the owners they purchased this gas from that says they're not to be paying any costs — any additional costs of this. Now where does the transmission companies go — who they look to — for reimbursement.

(Mr. Tauzin) First of all, you need to understand the procedure before the . . . . Procedure would not simply involve this tax. It would involve everything that is involved in a rate base of the—

(Mr. Leach) Yes, I'm familiar with the rate base. We're just trying to cut through it and say bottom line they were not allowed to do it.

(Mr. Tauzin) Well, that's just the thing but let's start with something. The federal government has allowed the pipeline company generally a 10% profit. If they operate efficiently they can come up with a 10% profit. If they operate inefficiently, do a bad job of performing, they're not going to make any money. But, assuming their operations are efficient, generally they're allowed a 10% profit. They're the only players in the game of energy production who have . . . if they operate efficiently. Producers you see in this room operate as efficiently as they want — make more money. Pipelines can't — under present federal regulations. The reason for that, of course, is the federal government is very, very interested in maintaining those pipeline companies because they supply the . . . So, first of all you've got to understand that pipeline companies have always and are always doing and

still doing it today . . . and the federal authorities have allowed them to pick up whatever necessary in costs, their costs, to compensate them along and make a 10% profit. You can understand now. You can understand that the federal government—

(Mr. Leach) Yes, I understand this, Billy. My question in the interest of time now, cause we still have . . . to hear from — I'm trying to understand what would happen if the pipeline application to continue making their 10% is disallowed for the additional cost of the levying of this tax by Louisiana.

(Mr. Tauzin) What I'm trying to point out is it's a terribly unlikely event.

(Mr. Leach) Well, all right, let's — we're going to use the event that it's not allowed. That's what I want to get to.

(Mr. Tauzin) It's a terribly unlikely event it's allowed . . . is to try to enforce those provisions of the contract to pass it back on the producer through the assumption of costs provisions which we have modified in our bill. We provide the state as appointive interest in that particular proceeding to protect the producer from having to absorb the costs. If we lose that provisions — if the pipeline companies succeed in passing it back on the producer, then the LaBorde bill, which was passed yesterday, provides that the producer will end up bearing the tax . . . gets the tax credit from the state in whatever it can bear so we have a revolving door matter then. When he comes in a pipeline company and he goes right out into the producer who compensates the pipeline company. To have a revolving door . . . the bill selfdestructs. It doesn't do us any good at that point. We, of course, would need to repeal it.

(Mr. Leach) Will it — when we start this revolving door — if a producer doesn't have tax liabilities equal to his tax credits then the producer is still the one who is being damaged at that point or is—

(Mr. Tauzin) Yes, sir. With a great majority of cases that's not so. But, it could happen, you understand that?

(Mr. Leach) What I'm more concerned about is if said producer decides that he doesn't want to participate in the first use that we're using here, if he decides that he'll just sell his gas out of . . . and not extract, not reserve any rights to any of the liquifiables and send that gas on through, which I understand, would result in a higher BTU output, etc. when it reaches the other end, what happens to the industries in Louisiana that's been dependent upon these hydrocarbons and these liquifiables, our source?

(Mr. Tauzin) Well, of course — that is occurring today. Where it becomes that economical . . . you're just not going to do it. There's some gas produced, for example, in an off-shore area in western Louisiana that is so dry when you produce that it's not really economical process — that is . . . so where it's not economical, you're right, that would occur.

(Mr. Leach) Well, is this going to accelerate the . . . ?

(Mr. Tauzin) I suggest to you that we're . . . is that we end up with this revolving door in a great majority of the cases and when that happens we have no more bill. Then the producers compensated as a credit from the first use tax which is paid by the pipeline company which gets credit from the producer under his contract. It will end all . . . What I'm suggesting to you, Buddy, is that in the past year, we put together a bill that provides us with an excellent opportunity of making this thing work and I suggest to you that where you cannot work in the LaBorde bill you're provided a . . . mechanism that would take care of a vast majority of the cases — cannot cover them all — simply because not all of them are adequate taxpayers in this state to the extent that they don't pay enough taxes in this state . . . I'll grant you that. But what I'm telling you is the bill will be so devastated at that point that it's useless for us.

(Mr. Leach) I appreciate the amount of work, time and energies that you and others have put on this and basically it's a governor outline and the policy of present-

ing this session I'm much in accord with, but, I think, for the benefit of the hearing, the purpose of the hearing, are to get to these issues that we must look at. And I'm concerned about these industries that are developed in Louisiana and their supply of these liquifiables, I'm told, are processed out by the producers — they reserve the right to these. And they're processed here in Louisiana and are available for supplies to our other industries developed around Louisiana.

(Mr. Tauzin) Well, let me suggest to you, Buddy, that I've done a very unpolitical thing in the last couple of weeks. I've met with the producers and the pipeline companies for the last several weeks and I've . . . . As late as yesterday we met two hours with the governor. We've given every possible concession we can make to them in this area.

(Mr. Leach) I understand that.

(Mr. Tauzin) Let me finish. And still have a workable bill. If we concede anymore we give up the bill. We're at that point.

(Mr. Leach) All right.

(Mr. Tauzin) Let me finish.

(Mr. Leach) Well, no, that's — we need to move on Billy cause we have — I understand that you've done this but my point is while this is all well and good there are some issues that the committee, before they take their vote, should be aware of and that's the things I want to become more knowledgeable on. And whereas you've made concessions there's still some things that I think legitimately should be brought out to the hearing. Now I'm concerned because I work in a rural constituency. I'm very concerned about what's going to cause — happen to the price of the butane and other gases that are used by the constituents in rural Louisiana should the shortage of these uh—

(Mr. Tauzin) Let me use some facts.

(Mr. Leach) All right, good.

(Mr. Tauzin) Two-thirds of all the butane is derived from refinery process. Only one-third comes from gas liquid to begin with. Butane makes up 1% of the gas liquid extracted. Only 4 to 5% of the butane goes into LBG used in part by the rural agricultural community in Louisiana while 10% of the butane gas goes to the federal chemical industry which turns it into . . . a critical component of the synthetic rubber and plastic sold nationwide — 85 to 87% of the butane recovered is used in the manufacture of gasoline which is also sold nationwide. What I'm telling you is when you continue breaking down these percentages an extremely small percentage impacts on Louisiana . . . What I've told you earlier is that an extremely small percent of the cases are not covered under the LaBorde destruct mechanism. And when you add those two percentages together or figure them against one another your concern is very minimal — extremely small — certainly not large enough to make you want to vote against the bill.

(Mr. Leach) No one has talked about my voting for or against the bill, but as chairman of the committee I think these problems should be discussed and concessions and this and that does not remove the fact that we are looking at some very serious things.

Now, let's go back to the point where the FDRC has not allowed the very small possibility, the remote possibility that you're not allowed an increase to be passed through. The . . . goes back to the producer. Tries to go back to the producer. Now, where in your bill . . . what in the bill now will try to prevent the producer from having to pay these costs?

(Mr. Tauzin) Two things. First of all there's a legal question and the producers will tell you . . . question as to whether or not costs of production includes the tax. Some of them believe it might but I guarantee you this — and they've admitted this in private — is the fact that when companies demand it from them they could argue that the costs of production does not include the tax. So that, first

of all, is an issue that has to be decided. Secondly, we provided in the bill, Sec. C on page 4 of the bill we're looking at, the original bill doesn't have any, we provided in Sec. C, which provides a public policy against such contractual provisions that it is in the public interest of the party who owns the resource — owns 95% of the gas on which the tax is measured . . . and not pass it back upon people in this state who only own 5% when the taxes don't even measure against that 5%. Dr. Dakin is here . . .

(Mr. Leach) Do you think this, in essence then, public policy here is to abrogate the contract of the sale between the producer and the pipeline company initially?

(Mr. Tauzin) I have discussed that point with Mr. Sour earlier. Perhaps you were not in the room, Mr. Leach. There's a difference between abrogation and modification. Abrogation goes to the part of the contract which is the principal reason why the contract is effective. In this case it's for the sale of natural gas to the pipeline company. Modification goes to the amendment or the changing or the actual overriding of provisions of the contract that are peripheral to the main issue and that are against stated public policy of interest to the people of the state. We're saying in this case that we have . . . the cost of production whether it includes taxes collected by the state. That peripheral issue is in the contract or said to be against the public policy of Louisiana. And that particular position is . . . . We're satisfied that it's workable — we're dealing with the problem.

(Mr. Leach) Then your statement to declare this as a modification not an abrogation.

(Mr. Tauzin) That's correct and the jurisprudence makes that distinction.

(Mr. Leach) We're going to interrupt this line of questioning for just a moment cause I don't want to keep the director of the bond commission here unduly. Mr. Ackal was concerned earlier as to whether or not the — what percent of the bonded indebtedness of Louisiana can

be recalled — paid off early. What is the status? You want to raise your question again, Mr. Ackal?

(Mr. Ackal) Basically, the chairman just said that approximately — it is my understanding that the vast number of bonds are not able to be negotiated earlier than the contract calls for. Do you have any idea approximately what percentage—

(Mr. ?) Yes. When we issue debt, the standard provision in the contract that we have with the bondholder calls for a length of time during which the bond will not be called. In other words, they cannot be purchased by the state from the bondholder — mandatory purchase — during the slated time and after that length of time then you have a varied percentage that you will pay to the bondholder for his bond. The standard length of time that we use in ten years. In other words, we issue a bond now we cannot mandatorily make that bondholder come back to us with his bond and us buy it from him — until after the 10-year period is gone. Now, we can purchase it on the open market, of course, or we can — passed a bill out of here yesterday which allowed money to be put in trust to . . . bonds and we can do that. But we cannot make that man bring his bond back to us the year before that 10-year period.

(Mr. Ackal) In other words, what you're saying, majority of the bonds that we have right now that's outstanding is based on the 10-year premises of—

(Mr. ?) Right. Now of course, that's correct and we've been issuing . . . serial which serially for the last numerous years — Of course, we'll have a lot of bonds maturing every year and a lot of bonds reaching that 10-year point every year. So, there are a lot of bonds that we could buy right now or that we could call right now.

(Mr. Leach) Thank you. Mr. Champagne wants to ask one question.

(Mr. Champagne) You don't see any real problems though if we had the money . . .

(Mr. ?) Yes, sir.

(Mr. Champagne) . . . you could pay off a lot more when you got the money?

(Mr. ?) Oh, absolutely.

(Mr. Leach) Any other questions? Thank you, Mr. Korans. Any members of the committee have any questions of Mr. Tauzin or any of his staff before we start the opposition?

(Mr. Tauzin) I do want you to hear from one individual, Mr. Chairman. We received testimony before the Natural Resources Committee about the problems of the citizens of this state . . . about to incur as a result of federal policy and . . . of Louisiana that bears a relationship to the way and the manner in which we provide energy to the rest of the nation. I would like for you to hear Mr. Charlie Smith of Cajun Electric on that particular point.

(Mr. Leach) All right. Mr. Smith speaking in favor of House Bill 768.

(Mr. Smith) Mr. Chairman, as Mr. Tauzin mentioned — briefly, several weeks ago I appeared in behalf and support of strip line legislation. And one of the reasons for that particular appearance . . . asked me to come here today and give you some of the facts that we have . . . for a number of years relative to taxes that Louisiana people will be paying starting on Jan. 1, 1979 for its coal imported from Montana. Some six months after we executed a contract with Shell Oil Co. the state of Montana levied a 30% severance tax. The additional taxes of — predicated on the total tax paid were some . . . 5% tax and of course the federal . . . taxes for that are simple. So, we're looking right now at 35% tax that's really a use tax of the coal and value of the coal that we buy delivered in our coal . . . in Montana. At the present time we've contracted 6,000,000 tons of coal a year and the severance tax or the sales tax really on this coal in the state of Montana is $2 a ton and that'll be $12,000,000 a year that the 900,000 people in Louisiana that we will be serving

this electricity we'll be paying for. We're talking about — course we have a contract now with a . . . major energy company for our natural gas . . . is less than 30¢ per thousand — 30¢ per million BTU. This coal . . . fuel will run in New York at a $1.40 to $1.50 per million BTU and we feel, and, of course, there are other states that we are going to contract coal from — the state of Wyoming and others and they are also adding these taxes on the value of their energy being shipped out.

(Mr. Leach) Thank you, Mr. Smith. Mr. Jimmy Morris would be La. Assn. of Educators that signed the card to speak in favor of this bill. Mr. Morris. Jimmy's not in the room at this time — we will move then to the — I'm sorry but I'm told there's other cards here that — Mr. Brooksher, are you wanting to organize this the opposition to this? We want everyone to have ample time to state their opinion — their statements. We would hope that we wouldn't have to go through the repetition of some of the same arguments. I recognize that each person has an interest to represent here. Would you like to lead off and then we'll take it from there?

(Mr. Brooksher) Thank you, Mr. Chairman. My name is Bob Brooksher. I'm with the Mid-Continent Oil and Gas Assn. I have today a prepared statement for you because I think it's important that we put everything together and I probably put my thoughts together in this prepared statement so that if you want to interject a question at any place I can pick up where I left off easily. The proposal by Mr. Tauzin as he has explained to you is an attempt to levy a first use tax on natural gas produced off-shore Louisiana in the federal zone and brought into Louisiana. This idea was first conceived in this state about 10 years ago and various efforts to make it constitutional it had been changed considerably to take the shape of the present bill and some of the bills that go with it. In all the forms that this bill has taken through the years . . . from trying to pass the bill have said it's constitutional and those that have opposed it have denied the constitutionality. I think the same applies to this bill. Although this committee and

its present members have heard details of this proposal and our opposition to it on several previous occasions I would like to briefly repeat the factual situation that you've already heard today and which we must deal in this issue, if I can be brief with it, so that I can explain to you just where we are. Off-shore federal zone gas is produced and owned at the time of production by producing companies. At the off-shore platform in the federal zone where the gas first comes to the surface the gas is purchased by a pipeline couple and the pipeline company takes possession of it at that point. Because it's in a federal zone the gas is immediately in interstate commerce. It doesn't have to come to Louisiana to be in interstate commerce — it's in a federal area to become interstate commerce. But, it's transported from this platform, usually in the company's pipelines, usually to an on-shore gas processing facility and then after it leaves the processing facility it goes on to the final pipeline customer. The producer, as you've heard today, although having sold the gas, has, by the contracted sale, retained the right to remove the liquefiables but he has agreed to bear all costs connected with this removal. When the gas arrives at the processing plant — this processing plant, mind you, is owned by a producer or a group of producers usually. The producer removes these liquefiables, which are approximately 4 to 6% of the total volume of gas and these end products — that's the propane, butane, ethane, natural gasoline — are sold mainly to Louisiana customers. The processed gas remaining — about 94-96% of the total gas volume in the plant is returned to the pipeline company and transported to its ultimate customer, usually and by and far largely some customer out of the state of Louisiana. Now, these aforementioned facts that I've told you apply to about 80% of the off-shore federal zone gas. Yes sir?

How much of that gas goes out of the state? You said a great deal of—

(Mr. Brooksher) Probably — I think the Revenue Dept. has indicated probably maybe 98%-98½ I think they've

said. We won't argue with that figure. By and large the great majority. That's what . . . when they talked about Bagert's bill. Bagert's bill is to take care of those people who . . . We won't argue with that fact. But some of this gas now, of this 15 to 20% I'm talking about is brought in Louisiana in pipelines that are owned by the producer and it isn't transferred to the pipeline company till after it's processed or what we call the . . . in Louisiana. Some gas, and this is 1½%, is probably bought in Louisiana for use in Louisiana by Louisiana users. However, all these exceptions to the general rule don't apply to over 20-25%, probably about 20%, of the total gas produced . . . . So, the owner of the gas we're talking about — the owner that the bill refers to we're attempting to tax here is Interstate Pipeline Company in about 80% of the cases. It is this entity that must pay the tax levied in this bill because it is the owner of the tax at the time the first use occurs, whichever use it is, in Louisiana. The careful attempt to tax the owner is purposely made in hopes that the owner will be permitted to pass this tax along to the ultimate consumer somewhere out of Louisiana. Now, this can be done if the pass on is approved by FDRC, formerly FPC. Because this is not a separate production or other similar tax, the pass on is not an automatic approved thing and as you heard earlier today must be considered in the cost of service and a rehearing held in order much the same as any other pipeline rehearing. Because the obvious attempt here is to levy a tax in Louisiana to be borne only by those people out of the state it is my personal opinion that politically the federal government cannot allow this result at the FDRC level. This is the same problem that the producing states have had and the producers, among those I represent, have had and we've been saddled with together. There are too many voters in the consuming state. Now, we don't like that particularly, but that's a political reality and we have to face it. When this pipeline—

(Mr. ?) Excuse me, Mr. Brooksher. Mr. Dunn?

(Mr. Dunn) Do you mind if we interrupt—

(Mr. Brooksher) No, . . .

(Mr. Dunn) I'm really trying to understand that. What is your answer to the coal situation that they pointed out just awhile ago where we're paying excessive taxes or prices for coal that we get . . .

(Mr. ?) I agree — they ought to keep their coal and we ought to keep our gas but that's not the way it works—

(Mr. Brooksher) Well, let me say this. You have a perfect right to levy a severance tax and you levy a severance tax which is added to the price of gas produced in Louisiana — like they're going to their coal. The only difference in the situation is that in the price of gas you have a federal government control on the price of gas and there's a limitation to what you can sell it for. Just like we have a limitation on the price of crude oil — the FPA sets it. Coal has no price controls, as I understand. So, whatever they levy is going to be automatically passed on. Now, in the cases of severance taxes levied on the gas produced in Louisiana much the same as their coal produced in Montana, you are levying the severance tax and that is being added to the cost of the product, in most cases. If you talk about your interstate gas price right now, your interstate gas price right now is roughly $1.46, we'll say — somewhere along in there — plus severance is the way they say it — $1.46 plus severance is severance tax. So, we are, on the gas that's produced in Louisiana much the same as the coal that's produced in Montana — we are getting the tax and the tax is being added on to the cost of it. What we're talking about here is the tax that's being levied on something outside Louisiana — that passes through Louisiana — not that's produced in Louisiana. Now, that's the best distinction I can be able to make of it, Mr. Dunn. But, when this pass on, as I contend that it's going to be denied, this pipeline company has to look somewhere else for relief. It has two options I think will be pursued simultaneously — maybe more. Inasmuch as the owner of the pipeline company must pay the tax, it can do so under protest, as Rep. Bruneau brought out —

one of the ways. And then, it has to bring a suit — I think he as 30 days in which to bring the suit — then it will bring its action tested constitutionality . . . of the bill. At the same time, it could also do this. Inasmuch as its selling its gas or buying the gas from the producer and he has a contract about that we mentioned about the processing, it could claim possibly that this tax should be borne by the producer and . . . immediately withhold that much money or miss payment to the producer for the gas. I don't know — I just pose that as a possibility. But this would only be done because of this contract that I mentioned to you that provides for the producer to bear all the costs of processing. The pipeline company will, in its allegations, be stating that the first use tax is really being levied on the processor and the money that they're paying, I think, Mr. Bruneau, under protest, is held in escrow by the Revenue Dept. . . . without regard to your tax on — when you're withholding it for the trust fund. I think if you pay the tax under protest it is held in escrow automatically. To prevent the pipeline company from demanding this payment from the producer, Sec. 1303, Paragraph C carefully repudiates the aforementioned contract. . . . objection to my use of the word but I think that's what we're doing here. Most people would agree that there's a constitutional question here. A lot of people agree that it's unconstitutional. I was interested to hear what Professor Dakin had to say but — on the constitutional issue — but we didn't hear that. Just let me read the sections of the constitution that we're concerned about, if I may. The United States Constitution says no state shall enter any treaty, alliance or confederation to grant letters of mark and reprisals, coin money, emit bills of credit, make anything but gold and silver coin to tender in payment of debts, pass any bill . . . ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility. Now the people of Louisiana felt so strongly about that and they liked that so well — mind you this is the federal constitution prohibiting the state from doing something — that the people of the state of Louisiana, in 1974, adopted in their constitution a proviso that says no bill . . . ex post facto law, or

law impairing the obligation of contracts shall be enacted. Yes, sir.

(Mr. Bruneau) Well, I wanted to direct the attention, Mr. Brooksher, to that language . . . . Why didn't you term that a modification or an abrogation that would still be . . . no matter which term you use. Would it hurt?

(Mr. Brooksher) I think so.

(Mr. Gunter) . . . How would this — uh — what would be the difference in a first use tax and a road tax? Say like we buy a tank of fuel in Texas and we come through Louisiana we . . . .

(Mr. Brooksher) Well, I think the tax there is levied on the use of the road and that's been okay as far as that goes.

(Mr. Gunter) Idon't—

(Mr. Brooksher) Let me tell you the difference in the tax, Mr. Gunter. You're collecting ad valorem tax right now on a pipeline that carries this gas. You don't but the state does. But each parish on which these pipelines go through they collect an ad valorem tax on the pipelines. That is considered a different proposition than what we're talking about here. That's been long held to be constitutional and all but there's a difference — a different factual situation — a difference of the position. It's been accepted and it's being done. But let's see where these facts take us to — where we've gotten. I think Rep. Tauzin and those people who have worked on this bill have done excellent job in trying — and a sincere job — in trying to enact a legislation to do exactly what they'd said. And they have made serious attempts to keep the ultimate burden of this tax off the pipeline company, off the producer, or the Louisiana consumer. But, if just will not work. First place, . . . is not going to let them pass gas . . . be passed through. That's my personal opinion. It cannot be done. The tax, I think, is going to be ruled unconstitutional for uses — most of the uses — that you've got here. If there is

a constitutional use it's probably the process. That's the only real use that you've got in the bill. You start transportation. If transportation, to a point, can be taxed, why can't you tax it all the way through to North Carolina or New York? Every state it goes through is going to jump on this bandwagon and tax that transportation. So, you've got to come up with a use, I think, better than transportation.

(Mr. Bel) Two things that — which you just said — I don't know quite how to handle. You said that you don't think that first use . . . . How can we get a determination from them unless we have this bill?

(Mr. Brooksher) I don't think you can. Just like I don't think you can get a determination from a . . . without some levy of the tax. As far as that goes, I think that same thing applies to the constitutionality, Mr. Bell. I think that if you look at — I'm going to cover it just a little bit later here but I'll cover it right now. I think you are political realists. I think most of you people here are here because you're political realists. You understand the politics . . . . Now, can you see, and I respond to the question, can you see how the federal government, that has an opportunity to take some administrative action not before a court, can allow a state to levy a tax to be paid wholly by the people outside the state? That's about the best way I can — I didn't mean to ask you a question — I'm trying to answer your question as best I can. I just can't see that. You know, I told you that's my personal opinion.

(Mr. Bel) Well, again, . . . unconstitutional, well . . . about the stevedore's tax being applied in the state of Washington — they held it unconstitutional in 1937, again in 1947 and this time on an 8-0 decision they reversed themselves.

(Mr. Brooksher) I think the facts, as I would say, I think the facts in the stevedores case, I have no quarrel with the fact that the United States Supreme Court has been . . . its issue. But I think if you look at the last two paragraphs

— same article that was quoting Fred Ellis — you'll notice that Ellis makes reference to the politics in the Supreme Court decision. And that's what I'm talking about.

(Mr. Bel) But don't you agree that as politicians in Louisiana that we are to provide . . . and of course the opportunity to deny us the money that is due the citizens of this state?

(Mr. Brooksher) Well, I would like to see Louisiana get all the money to which it's entitled. But what I'm going to spell out for you right now is how I think this is going to work and I don't know whether that's what you want. I think I'll answer that question right now in where I'm going. Now—

(Mr. Guidry) You, as far as I'm concerned, got to the heart of the thing a while back when you — in the definition of the word "use" the activity that's going to be . . . requiring the — give a new definition to the word "use". At least we've got eight different activities which are defined as used and you said that you felt that there was only one of those activities which you thought might . . . the court would accept. Is that what you said?

(Mr. Brooksher) Well, I say of all the uses there — let me re — I said that, I didn't really mean it. What I'm saying of all the uses that is there the only one I think that might have a chance to be . . .

(Mr. Guidry) The sale, would not, in your opinion, would not . . .

(Mr. Brooksher) Just a mere sale, huh? . . .

(Mr. Guidry) . . .

(Mr. Brooksher) Well, you got — the way they define processing here — I think they have two steps to the processing. You can take out what we call liquids, which is . . . and I think that's what you're referring to. That might possibly be sufficient activity to . . . . The processing I'm really talking about though in addition to that is the big processing you do which is comparable to a

refinery operation. It's more than a mere separation of the gas . . . liquid. This is a complicated process which involves . . . lots of things to take out . . . propane, butane, ethane.

(Mr. Guidry) Let me ask you — what percentage of that off-shore gas coming through here is subjected to those uses . . .

(Mr. Brooksher) I say about 80%. In fact, I say virtually all of the gas that comes off-shore is processed in Louisiana.

(Mr. Guidry) So it's very well that we could tax it — constitutionally based on that view. Is there any way that this activity could be transferred to another . . .

(Mr. Brooksher) I think it could but I don't know whether you — I mean what is . . .

(Mr. Guidry) It's not economical. I understand. You think they wouldn't move away just because we . . .

(Mr. Brooksher) I don't know if they're going to move away but . . . To continue — the factual situation — the producer, in the case I've outlined to you, it's only about 5% of the total gas . . . . This transferred to these liquefiables I told you about — butane, propane, ethane, natural gasoline. Now mind you, if the producer pays this tax you're talking about 5% of the product bearing 100% of the tax. You're gonna tax the full stream that enters that plant, that comes in. If the producer has to bear it the only place he can get his money is from these liquefiables which only 5% of it. This could mean, we've had some people figuring in this, propane and butane could increase in price by 33⅓% if the FEA would allow the price increase. That's controlled by the FEA. Ethane . . . are not controlled but marketing conditions in Louisiana today probably would not allow this to be passed on. You just couldn't sell it. There's a flood right now of ethane. But if all these prices could be increased it's our contention that the cost would go to the Louisiana consumer. Much of the propane and butane increase would be borne by the

farmer and the ethane increase by the chemical company. Billy mentioned that a lot of this ethane — I mean a lot of this propane and butane goes into refineries. He also mentioned to you that a lot of propane and butane comes out of the refineries. So I suggest to you that it's not very probable that the propane and butane that comes from these gasoline plants is going to be put in the refinery and the refinery propane sent out to the consumer in Louisiana. Most of the propane and butane produced in these plants, I'm told, is what you'd fine — or most of the propane that's used in Louisiana but a . . . come from these plants is what I'm saying. But if the producer is prohibited by the . . . or by the FEA from passing along these costs, maybe these gas . . . are going to become unprofitable. You may not just move the plant — this could cause the closure of some plants, a job loss, and a loss of the plant products for this state. Mind you, as the price of gas increases, right now, without benefit of this tax, as the price of gas increases it becomes less and less advantageous for these liquefiables to be processed. And by adding this on there you shorten the life of these plants . . . this for Louisiana. The pipeline companies would welcome this — these liquids or the liquefiables I guess is a better word. They would increase their BTU output and they sell their product at the end based on its BTU output. But how about — we talk about the producers and Billy has indicated that by the bills that were passed yesterday — Rep. LaBorde bill — that this will make the producer whole if he has to bear it. I think that is a sincere attempt to do so and we certainly appreciate it but I would suggest to you two things— First, and he had mentioned this to you too, in many cases the producer off-shore is not necessary the high severance taxpayer in Louisiana. And whereas he gets a credit for his severance tax the tax bill he pays on the first use tax may be more than his severance tax — in many cases is more than his severance tax and as the production in Louisiana goes down and is reduced you have more chance that that producer is not going to be made whole and . . . . Secondly, House Bill 1187 provides a credit. We appreciate it, mind you, but as

you have seen in the past and we have seen in the past these credits that we talk about had a tendency to leave us from time to time. One legislature passes a credit and the next one says look at this exemption we're giving or look at this credit we're giving and they often they want to repeal it. I'm concerned about what could happen in this instant. This may be a temporary washout as Mr. Tauzin said, but we're concerned about how long it might last.

(Mr. Leach) Mr. Bruneau, we're not going to ask for . . . the last repeal of exemption bill. Go ahead.

(Mr. Brooksher) One other thing ought to be mentioned. It is long been the practice of the FPC and now the FDRC to approve gas sale contracts where the producer retains the right to process for the liquefiables. This part of the contract is usually not been considered — they been talking about price more than anything else when they consider it . . . this contract had been in there. There have been some recent actions before the FDRC where the northern consumers are asking that these contracts not be approved — that the FDRC reject the new contracts that allow producers to retain the right to process. I tell you that any action that Louisiana takes now in this regard could cause this to be a much more serious consideration by FDRC in the future in connection with those contracts. As the shortage of gas intensifies the probability of the requirement the liquids . . . intensifies also. And I think when you're trying to tax this stuff and pass it on it causes those people up there to think more about it. I'm talking about the FDRC people. This latest attempt to tax gas produced off-shore in the federal zone, I say, applies — indicates to you that are square in the face and a political reality. The OCS Lands Act simply prohibits the state from taxing this gas. That's the reason they call it use tax. However, I don't think that many courts that allow you to do indirectly what they prohibit you from doing directly. So, I think that should be considered. I think they've made this exactly the same as the first use tax in talking about competition, fairness, and things like that. I don't think we'd want to look at it that way. My contention then

today, gentlemen, is in the alternative. Taxes unconstitutional are in violation of the Outer Continental Shelf Lands Act, or, despite what Mr. Tauzin has done, I say they're mighty fine efforts to attempt to prevent the producer from bearing the tax if it is constitutional and if this levy can be made upon this process it'll be borne by this producer and not passed on to somebody . . . but, where possible, passed on to the people of Louisiana. We talked a lot about constitutionality here before you today but I'd like to mention one other way the federal government has to retaliate. I don't like it, perhaps, but it's here. One example, several years ago New Mexico passed a tax providing for levies on production of electric power. Now, they had a power generating plant which I think came from a dam — water going in there generating power and part of that power went outside the state. So, New Mexico levied a tax then turned around and gave a credit in exactly the amount of this tax to the people in New Mexico for their power use. This effectively exported the tax. Now I'd like to read for you from the Tax Reform Act of 1976, as passed by the United States Congress and how they reacted — No state or political subdivision thereof may impose or assess a tax on or with respect to the generation or transmission of electricity which

against out-of-state manufacturers, producers, wholesalers, retailers and consumers of that electricity. For purposes of this section a tax is discriminatory if it results, either directly or indirectly, in a greater tax burden on electricity which is generated and transmitted in interstate commerce than on electricity which is generated and transmitted in intrastate commerce. Congress there reacted by passing a law prohibiting what New Mexico had done. I would also mention to you that in 1975 the state of New York, I don't know when it was, but the Congress, in 1975, passed a similar law outlawing tax in New York on the transfer of stock. They did it the same way. So, what you're doing here — attempting to do what they've done elsewhere and you're . . . — I don't know whether I should say that — I don't think anybody could say this for sure and I wouldn't want to say it — this is

another way, not regards to constitutionality, the federal government can retaliate. There could be several others. For instance, how will Congress react to the treatment of the natural gas bill presently before that body? Apparently there are some people in Congress today who don't sympathize with the producing states nor with the producer. They could react and do something about allocation of interstate gas — intrastate gas. Or deal with the most recent problem in the federal tax proposal. How might they react to the issue of the severance tax? This is still in conference committee. Senator Johnston held out strongly and was able to get this severance tax added on as a proposal in the bill. I say that's a temporary measure cause the bill hasn't passed yet. We hope this bill that you're talking about today will not cause the conferees to change their minds on this severance tax issue. You mentioned before, and let me just hastily conclude here, about the dedication of revenue. I would suggest to you that the constitution of Louisiana provides that all monies go into general fund and no appropriation of the legislature can be for longer a year. And I think, regardless of what you try to do with this bill, I think that next year the legislature can undo every dedication that you make without . . . . No need shown for tax at this time. Only because this tax proposes an idea or method or way to tax out-of-state gas consumers do you give any consideration to it. It won't do this, I say. You're scared it's going to work to the detriment of the state or to the producers who are producing a critically needed energy source. This isn't the time to place additional burdens on people of this state or those producers who are trying to keep this country operating with an adequate energy of . . . . I submit to you, gentlemen, that you do not need a constitutional lawyer to recognize the perils of this legislation. I say that the federal government will retaliate. What we need from you today is a joint effort to overcome all our problems. We in the energy business are working to do all we can to overcome our energy problems. Don't tie this stone around our neck now because it won't help — but that's what you'll do if you pass this bill.

(Mr. Ensminger) Mr. Brooksher, do you feel this bill is unconstitutional in your . . .?

(Mr. Brooksher) Mr. Ensminger, I said I have some questions about its constitutionality. I think there's a possibility that the processing in Louisiana could be a constitutional point. That's the problem—

(Mr. Ensminger) Do you think it will be tested on its constitutionality?

(Mr. Brooksher) Yes, sir, I would think so.

(Mr. Ensminger) How long do you think that would take?

(Mr. Brooksher) Well, I would say they could probably do it in three or four years but I don't know. The lawyers tell me that's about what it would be.

(Mr. Ensminger) Three or four years — So, really, even if we pass the bill it's not going to have any effect on you until three or four years from now, right?

(Mr. Brooksher) Well, I don't know that I quite agree to that. I think what's going to happen on the effective date of the bill somebody's going to have to pay some taxes. And that's money that's going to have to be paid out — now whether it be the — we've got some questions here and people arguing about whose going to be paying that amount.

(Mr. Ensminger) That would just be a poor savings account, wouldn't it?

(Mr. Brooksher) Well, I don't know whether the interest that Louisiana pays is as good as you get somewhere else. I don't know whether a lot of people have that kind of money to put up. We're talking about several hundred millions of dollars.

(Mr. Ensminger) Then, in case the bill is — provided that it is constitutional, then you would have questions of whether the credit we've allowed in Louisiana . . . Louisiana users could be held constitutional, right?

(Mr. Brooksher) No, I don't think I would . . . the constitution . . . give the credit. My problem with the credit is just that — it's a credit. In the first place, by the time you got 4 or 5 years going by and the production in Louisiana has gone down, the person that pays first use tax or pays on off-shore production which is going up — so the tax they're going to be paying is more than the severance pay that they pay in Louisiana. So they can't get that much credit to start with. Then, secondly, I'm concerned that a future legislature is going to leave this credit there.

(Mr. Ensminger) Okay. Suppose if there was no credit given to any to provide for Louisiana uses what percentage of this tax would be paid by the people of Louisiana directly?

(Mr. Brooksher) Well, I think that has a lot of problems with it. We'd say the total tax — attempt would be made to pass the total tax on to the users of ethane, propane, butane and natural gasoline. Not all of that is used in Louisiana — a lot of it is — I can't tell you exactly how much. But a lot of it is. Now if the FEA would allow that to be passed on all of the tax that could be would be passed on to that.

(Mr. Ensminger) What is the worst — what percentage or what amount dollars if we're talking about — what do they project . . . will generate at the present time?

(Mr. Brooksher) I think they said $170,000,000 and I would say probably you're talking — could very well be talking about at least $100,000,000, maybe more, I don't know.

(Mr. Ensminger) What — it would be passed on to out-of-state or what would be used in Louisiana?

(Mr. Brooksher) In Louisiana — I think that's where you've got it.

(Mr. Ensminger) A hundred million dollars? But that is the amount of tax . . . small percentage of that is sold in Louisiana.

(Mr. Brooksher) I said a great percentage of that is sold in Louisiana. I think Rep. Tauzin and I disagree on that point.

(Mr. Ensminger) In other words, you're saying $100,000,000 out of the $170,000,000 could possibly be paid by Louisiana taxpayers?

(Mr. Brooksher) That's off the top of my head but — plus I don't know. The producers of Louisiana . . .

(Mr. Ensminger) What I'm trying to get down to — do you feel political realists and we being somewhat the same type gets down to the constituents or the voters — you've talking about the corporations would pay $100,000,000. How much of it would be passed on down to the ultimate users of the product?

(Mr. Brooksher) Corporations or whoever that produces is going to pay all of it. Now, I'm saying out of that all of it — out of that 170 we're probably — we could possibly be talking about 100,000,000 going to the Louisiana people.

(Mr. Ensminger) People or corporations?

(Mr. Brooksher) Well, some of that is going to . . . and it goes to corporations — chemical companies — which creates jobs, you see. But, I think you got, in addition — don't overlook the problem you have that if — that the FEA says you can't pass that on, that propane and butane increase. Now, that's where you got some real problems that the producer has to eat the tax. You may not be concerned about it, but he can't operate his plant if he has to eat the tax. We're going to have one company to testify in a minute to tell you how many plants they'd have to close if they have to eat the tax. Now that deprives the state of the end product of this liquefiable — of this gas if he had to do that. So not only are we talking about possibility of passing on the tax to the consumer of Louisiana we're talking about another possibility — a distinct possibility — that the consumer won't have the product.

(Mr. Ensminger) But what I'm trying to get at — maybe I'm not making myself clear — but what the ultimate consumer — that man that turns on his lights, drives his automobile, and uses the end product — how much of this $170,000,000 would be used by the people of the state of Louisiana?

(Mr. Brooksher) Well, let me say this about it — the only thing that that person uses is the propane and the butane and that's just a part of it, you see.

(Mr. Ensminger) We've excluded the generating plants for electricity, etc. in this bill, right?

(Mr. Brooksher) Right.

(Mr. Ensminger) —that used the gas? . . . utility bills. What about the man . . . gasoline prices?

(Mr. Brooksher) I don't think it would affect his gasoline prices.

(Mr. Ensminger) Okay — so to get back to what you were trying to tell me — you repeat the words the propane, the butane, the ethane, etc. like . . . would be the only products that we would fill as the ultimate consumer in Louisiana?

(Mr. Brooksher) I think that's right.

(Mr. Ensminger) And it's no way . . . that that would be $100,000,000 for the use of those products, is it?

(Mr. Brooksher) I think it would be. You're talking about—

(Mr. Ensminger) In Louisiana now?

(Mr. Brooksher) I'm not talking about — I'm talking about — you said ethane . . . the little guy that drives the automobile doesn't use ethane. That goes to a chemical company.

(Mr. Ensminger) Okay. If that chemical company did manufacture a product some of it is going to be sold in Louisiana, some of it is going to be sold in other states,

right? So, it's not coming back to Louisiana. What I'm trying to ask you — have you all thought about what $100,000,000 is going to borne by the people of the state of Louisiana?

(Mr. Brooksher) I can't tell you how much — I can tell you if the price

(unknown) I'm not going to argue to the point that it's going to be all that to the individual — that's not true — it's not all going to this little man, this little individual, but the tax on — if it falls on these liquifiables, the person who produces the liquifiables is going to try to recover any money. Whoever buys it — those people are in Louisiana, but not all of them are little people that drive cars that use butane.

(Mr. Leach) Alright Bob, I think we've got that point that's going to be made. We've now used up 35 minutes of the hour on the opposition of the bill. Mr. Champagne has a question. We still have nine witnesses to appear in opposition to the bill.

(Mr. Champagne) It seems to me, though, what you take — the assumption you making the hundred and seventy million is that your statement before that the only thing that the tax could be on would be the hydrocarbons, what's taking from it. You overlooking the fact that presumably, I think the bulk of the tax if it's constitutional and so forth and so on, would be paid by the gas that goes out of state . . . . the hydrocarbons. I think in answer to Mr. Ensminger you're assuming that the only part of it that might be constitutional is the one where you extract and you would put all the tax on what you extract from the gas. But really, I think they propose to get the bulk of it from that gas after it's extracted and it . . . forward.

(unknown) But, I think Mr. Ensminger understood this point. We're talking about only if this whole thing stays in Louisiana if they don't allow this to be passed on. My intention is that they will not allow it to be passed on.

(Mr. Champagne) Well then there is no way they can get a hundred and seventy million dollars out of it. That's what they propose to get out of the whole thing. But if there is no way they can get that out of it, if they . . . . It's got to be less than that. Because the proposal as it is assumes they are gonna get a tax on that when it goes . . . .

(Mr. Leach) Any other questions to Mr. Brooksher?

(unknown) The tax, Mr. Champagne, is gonna be levied on a hundred percent of the gas . . . and because of this contract that the producer has where he has to prepare the cost of it, then I say that the liquifiable are going to bury the total burden whatever the tax is.

(Mr. Leach) OK, no other questions of Mr. Brookshire. Thank you for appearing this morning. Mr. Ed Steimel from LABI.

(unknown) He said he will be back later.

(Mr. Leach) After the bill is passed or—. OK Mr. Truman Woodward representing Exxon Company. Mr. Woodward.

(Mr. Woodward) Mr. Chairman.

(Mr. Leach) I'm sorry sir, now I have a card here from Mr. Woodward and a Mr. Godbold, Alpen, Patrick. I was trying to take these in order but you all would like to make a joint presentation. OK, Mr. Woodward was the one that was recognized. Do you Mr. Woodward want to turn this over to someone with Exxon?

(Mr. Woodward) If I may I would like to just make one . . .

(Mr. Leach) Alright, you pull the microphone up please, and I'm asking the audience and the committee to please help us now as much as possible to move as expeditiously as possible. I know each of you have some very important — to state and we would like to hear it. Let's try to pay attention so perhaps we won't have to cover the ground a

second time. Go ahead sir. Identify yourself for the purposes of the record.

(Mr. Garner) Mr. Chairman and members of the committee, my name is A. C. Garner, Jr., manager of the Southeastern Production Division of Exxon Company, U.S.A. The Southeastern Division is headquartered in New Orleans, Louisiana and encompasses Louisiana and the southeastern part of the U.S. along with the Gulf of Mexico OCS . . . . We appreciate the opportunity to appear before you to discuss Exxon's views of the proposed First Use Tax. In recognition with . . . bill I have with me a group of associates who . . . in specific aspects of the operation. . . . Mr. F. S. Godbold on my left who is qualified to speak on legislative . . . processes; Mr. Chuck Aplen who is in our natural gas department, sales group and . . . without contract division regarding sales of natural gas and federal . . . procedures.

(Mr. Leach) Excuse me just one moment. Would you turn the mike up. Sir if you could pull the mike — we are not able to hear you now.

(Mr. Garner) I'm sorry. Can you read me now?

(Mr. Leach) Yes, if you will speak into the microphone we can all stay alert here.

(Mr. Garner) Very good. Mr. Bruce Patrick on my right who is a tax attorney from our headquarters tax department in Houston and Mr. Truman Woodward, senior partner in the New Orleans law firm of . . . I brought these gentlemen with me today in an effort to provide you with answers to questions that may arise during the course of the testimony. We really have five points that we would like to discuss in this, major provisions of the House Bill 768 in the opinion of our legal council violates both the U.S. and the Louisiana constitutions Mr. Woodward will expand on this in a moment. If the bill is ruled constitutional in certain parts, most of the economic impact of this proposed legislation will eventually come to rest on the producers of the OCS gas. In this case, the impact on Exxon would be in the neighborhood of about

twenty-two million dollars for the year 1979. This would become more severe over time . . . Thirdly, aggregation of contracts and application of discriminatory credits, the two remedies proposed to litigate potential economic impacts will likely not achieve their objectives. With the probable failure of the remedies, the ultimate impact will fall largely on Louisiana consumers or producers either as a result of higher prices or reduced . . . Lastly, the provision of House Bill 768, which legislatively aggregates certain bonafide provisions between private parties along with the requirement of House Bill 1187 making service tax credit depend upon a certain committee proceedings would encourage retracted and costly litigation within the Louisiana Gas Industry. With these points in mind, we would like now to expand them in order to address the constitutional issues, I would like to call on Mr. Truman Woodward.

(Mr. Woodward) Gentlemen, I've been with the firm . . . and it's predecessors for fifty years. It was an old firm when I first became associated with it. I am now one of the two senior most partners in that firm. I'm a past president of the Louisiana State Bar Association. I have been on the council of the Louisiana State Law Institute for twenty years, and I am now the vice-president of it. I am a member of a number of professional organizations and I am president of the Louisiana State Bar Association. I have appeared before the . . . in many federal courts many times on constitutional issues, presumably because of that the Supreme Court of Louisiana has asked me to represent it on a number of constitutional issues in the federal courts. I have done so and I am glad to say successful. Mr. Brooksher has touched on some of these constitutional matters and I think we have to go to them more in depth than he has. There are a great number of issues before you but I'll try to hit the high spots and do it as quickly as I can. First, we have a question of whether or not the tax itself is constitutional under the interstate commerce clause. Historically, the constitution of the United States originated because of the fact that the states

throughout the . . . were imposing duties and imposts on the products of each other. The primary purpose of organizing constitutional convention and having the constitution adopted was to eliminate that which was destroying the commerce between the states. The constitution mentions no words in saying that the right to regulate interstate commerce shall belong to the commerce of the United States. Based upon that we have had tremendous mass of . . . during the years. It started with the realization that there must be some basis by which the . . . could be taxed so that the states could receive the cost of the benefits they gave to the movement of the commerce and hence you're permitted to tax the pipeline in which passes in the railroad tracks in which it moves and the court has gone so far as to say that if interstate commerce halts in route for storage longer than just for loading from one freight car to another or on the ships that can be taxed because there is a . . . of the industry of commerce. And the court has also said that if the procedure if any of the products are halted for manufacturing purposes and they go through a manufacturing process that halts them . . . and the question has always arisen in each of these cases and throughout the years where various states have attempted to levy some taxes on these various products and there have been a multitude of cases and each one of them the United States Supreme Court had to go through the problem of determining the problem of determining the problem on a case by case basis. So, in the last two cases that came up, which were the Auto Transit Case in Mississippi a year ago and Washington . . . Case, Mr. Bel mentioned that was decided just a few days ago the court laid down four rules. Each one of these rules was a recognized decision of a prior — in a prior case by the court — Supreme Court of the United States, in which they said that these are the various things that must accompany the right of the state to legislate your tax. It said they must be — meaning your connection with the state, the state can't levy a tax unless it has some connection with the fund. There must be a fair relation to the benefits, there must be no discrimination, and the tax

must be fairly apportioned. Now, in these two recent cases, they said that all four of those facts must exist. Not just one of them, not two or three, every one of the four has to exist before a state can levy a tax on interstate commerce. Now remember that the tax that is being levied here in on a product that comes from outside of the state, into the state, and is in the same condition as far as commerce is concerned as interstate commerce, as far as the products moving from Texas into Louisiana. The state of Louisiana now as you have heard has the minimal uses that are being that are being sought to be taxed. And when I say minimal uses, there is only one or two. One is manufactured — manufacturing of the gas if it goes into the point where it is consumed certainly it is subject to a use tax, and certainly if it is stored here it is subject to a use tax. If, providing of course, that there is no discrimination and fairly apportioned and if there is just a relationship to the benefits, but that is where we come to the question. Before I even mention the question of processing, let me just point out, that in every one of these cases where these taxes have been permitted, the tax was levied on intrastate commerce as well as interstate commerce. This tax does not seek to impose any tax on the gas moving through pipelines that's produced in Louisiana. It doesn't seek to tax any gas that comes from Texas or any other states into Louisiana or through Louisiana and hence, there is latent discrimination in this case because these . . . this particular package of taxes does not apply equal. It is a seven cent tax that is sought to be levied on gas to come from the Outer Continental Shelf. It doesn't apply to tax to products moving in the same relationship on gas produced in Louisiana. It doesn't apply to gas coming from other states and having the same minimal . . . effect as the — it only applies to gas coming from the Outer Continental Shelf that is in direct violation of the specific language of the United States Supreme Court has used in every case including these last two and I don't want burden you by reading it to you, but I assure you that both Mississippi and Washington, where the . . . case was decided a few day ago, levied the same tax on intra state activities as it

did on interstate activities, and in every other case where there has been an interstate commerce tax upheld, it has been where this occurred. Now, let's talk about processing just a moment. I disagree with Mr. Brooksher that processing is a halt. It runs through, all the way through, and it never halts. The process continues. The gas is always under pressure and it always moves. But irrespective of that, we have . . . and the wreckage of the state of Louisiana established that there is — we know of this particular instance where 48 million cubic feet a day is coming from Texas, is exempt from this tax because it has paid it's Texas severence tax, it moves into . . . pipeline and moves into Louisiana and is processed in Louisiana. So, you can not tax this gas that you trying to tax and not tax the gas that comes from Texas and is processed in Louisiana. There is lots of gas that meets all of the other minimal requirements, and when I say meets it has the same connection with Louisiana as the other minimal requirements, but, there is this 48 million cubic feet of gas that is processed in Louisiana. All of it moves through the pipeline. Much of it is sold here. Much of it is transported to processing stations. Much of it is measured here. All of these are also items that are subject to tax, and when you talk about that the Supreme Court has also said that there may not be any repeated exactions, meaning you can't have a situation where one state can tax a product and that same tax be levied by every other state through which it passes. And if passing through a piepline — . . or selling it or transporting it to a — one of these plants constitutes — one of these factors, then there could be repeated exactions all the way from Louisiana to Maine. That is another reason why this tax is unconstitutional. The four rules as far as . . . is concerned, I think that the activities are minimal. As far as a fair relation to benefits is concerned, it's certainly discriminatory because the benefits that are given to this tax — to this gas are identical to the benefits that Louisiana gives to it's own production, to the production that moves through the states, and particularly to this 28 million cubic feet of gas that comes from Texas, and is processed in Louisiana. So,

we are violating every rule that the United States Supreme Court has laid down. Now that's the fair benefits, and what are you talking about the benefits. You are charging these people seven cents which is identical to the severance tax and you charge nothing to Louisianians for their movement of their gas, and the processing of their gas. You charge nothing to the Texans for the movement of their gas, and the processing of their gas, and you are charging the same amount on this gas as you charge for the wrenching it from the soil of Louisiana, an unrecoverable, non-renewable resource. This is not a fair distribution — to charge seven cents for a severance and also charge seven cents for moving it through a pipeline that already pays it tax or running it through a processing plant that already pays an advalorem tax. Now, then you come to the question of discrimination. There are all kinds of discrimination . . . . In the Boston stock exchange case, which was decided fairly recently, the United States Supreme Court says it is not only a question of an existing discrimination, but if it is susceptible of discrimination in the future, it is unconstitutional. This is a tax on gas — is discriminatory in the sense it is not applied to oil through the mention made of the ecology, the reference to gas and oil are . . . as far as college is concerned, and no matter what this tax is called it ends up being a severance tax. In this auto transit case, just as Blackman said, that you no longer determine a tax based upon what you call it. You determine the constitutionality of a tax based upon what it accomplishes, and what this tax accomplishes is the tax to place a severance tax on off-shore oil with the hope that it can be exported to other states. In addition, as a discriminatory fact, this tax is not levied on the owners. The owners of the tax are not the people who do the processing. The owners of the tax are the pipelines, and we will come back to that later. So, you levying a seven cent tax on people who don't even own the tax of the gas. Then we come to the question of uses. There is no apportion. There is absolutely no apportionment, which is one of the requirements, because none of this tax is going to be levied on other products of the same character, and whenever you

have a use tax, you have to levy it on everything of that character. You can't say you are apportioning it — you are placing a tax on products that come from Texas into Louisiana. The reason for the use tax was the Supreme Court recognized that some states had sales tax and other states did not. The people in the states that had no sales taxes went over the border, bought their machines and bought their products, brought them into Louisiana, used them there — here. To equalize that they permitted Louisiana and the other states to have no sales taxes to equalize with a use tax. To equalize with their use taxes the use of the products in Louisiana when they were brought in from out of the state and used in Louisiana and the court has said if it doesn't end up with a use, with a consumption, not a use as to find in this tax, buy a consumption in the manufacturing process or a use such as the use of machinery. It can not be equated with a sales tax and only interstate commerce that ends up with such consumption substantial use can be taxed, not these minimal . . . uses we are talking about and not the processes. The case called . . . and in that case the court said that there had to be equal treatment on products from outside of the state. I'm going to touch just briefly on the . . . clause . . . The United States has adopted the natural gas act and OCS Act where and FDA controls completely without any qualifications, and has a right to fix prices and when you ask whether or not these bureaucratic bodies will amend this to be passed through, you can only say that you have to look at it historically to see what someone is going to do. They have the power to pass it through or not to pass it through. But historically, this bureaucracy has permitted the . . . of 14 dollars a barrel the oil that is imported from outside of the country and 5 dollars on our home produced oil, and make us sell our gas to 20% of it's BTU value and how can you expect them to look kindly on the prospect of increasing another seven cents on the consumers that have such a political clout in the northeast. I say, it is just unrealistic to assume that will happen. I want to also talk a bit about the contract clause. We had a great deal of discussion this

morning on the question of the sanctity of the contract and whether or not that can be composed on the reimbursement division that's in this proposed sanction. The reimbursement clause would benefit excellent if it was held to be constitutional. In arguing that it is unconstitutional. I am arguing against Exxon interest in this particular speech, but it is the constitutionality of this particular section of the constitution, and of the new process clause which has made free enterprise work. It's the reason that the United States and Louisiana are great, because industry can depend upon not having the agreements that it makes set aside. These two clause, and particularly the impairment of contract clause have been almost invariably maintained to an extent beyond the erosion that it happened in many other sections of the Constitution. The court has permitted a state to exercise it's police powers for the welfare of the — the public welfare, the morals, the health and the lives of the people. In the 1933 depression, they extended the rule to say that that was such a terrific upheaval that they could be a moratorium on the foreclosures of mortgages. Subsequently, there have been a few situations such as that where the court has permitted it to hang — to be advocated. But, the language in the cases unquestionably says that the contract may not be impaired. Chief Justice Marshall, a hundred and fifty years ago said that impairment means no abrogation, no change in the rights, and if it releases a part of the obligation, it the past and in the United States Supreme Court just a few years ago in the Bank of . . . against . . . he said a contract is not to be impaired at all, it's not a question of a degree, but a disclosing of any part of it is fatal. So, what we are being told is that where there is a peripheral provision in a contract, it can be changed. That is not what the United States Supreme Court has said. There are a number of cases, one of them that started it was many years ago in the United States Supreme Court where they held . . . an oil lease provided that the lessee was there all the time, that the state could not come along at all. They could not come along and require the lessor to one-eighth of it because he was getting one-

eighth of the royal, and since that procedure there are any number of cases which would tell the same thing. All the way through they have said this can not be changed and the courts continued to say that that facet which is certainly only a part of a . . . can not be changed. The courts say that you can not reduce the amount of an indebtedness and you can not accept in cases of great upheaval such as the depression make an extention of time in which to pay that and the courts have also said that wherever you do it, it has to be for the benefit of all of the citizens. It can not be just a private contract that you are changing, it can not be a series of one class over another class. It has to be state-wide and every contract containing that sort of a provision has to be affected by the same statute, so that you can't just say that in these particular contracts of reimbursement on off-shore gas that it doesn't apply. And then what do you do when you have the provision like that in the processing of Louisiana gas. You don't apply to that. What do you do when you have the provision for the same situation with gas moving in from Texas or other states. You don't apply it to that. So, there's gross discrimination. It just can not be done because you can not discriminate in the application under any circumstances. The courts who said this can not be . . . now certainly if you change the rules as to who has to pay a hundred and seventy million dollars it is not minimal, it's not peripheral, and it's certainly is depressive — depressive on somebody — however owes the debt, and the state cannot change the rules as between parties on private contracts as to who can pay this debt. There are some who say that the Louisiana Public Service Commission has changed contracts with respect to gas being furnished to power plants, but that is under a constitutional provision which gives public service commission the right to make these regulations and they have always had a right to regulate the operation of the utilities and their rates and their charges and everything that relates to them, and the constitutional question as to the invalidity of a contract has not been raised because of that factor. The — in the 1977 case, the last case on the subject, the

Supreme Court said private contracts cannot be modified to repudiate debts or deny the means to enforce it. I also want to point out that there is a very good argument that could make — and I don't want to take up the committee's time — that this particular phase of it, this reimbursement clause is a denial of — and is a denial of the equal protection. Thank you gentlemen.

(Mr. Leach) Thank you, Mr. Woodward. I think that you certainly have made available your opinions on the constitutional question and the committee appreciates that. It's one of the sad things in the state government that we still attempt to consider bills of this nature within a given limited amount of time. At this time, ten minutes after one, I am going to call a recess for the committee. We will come back in at two o'clock. If you all will please be here at two promptly because we do have some additional bills that . . .

find a chair. Sergeant-at-Arms would you come up here, please. When the committee recessed for lunch, we were having a presentation from the Exxon. Mr. Woodward completed his testimony in regard to constitution questions. Now, would you like to continue sir? We would ask that if you will in . . . time, if you would make your answers an brief as possible, I know our committee members don't always ask questions that bend themselves to brief answers, but we will try to this afternoon.

(unknown) Thank you Mr. Chairman. In interest of time, I have prepared a testimony but I will dispense with that and file with record . . . testimonies . . . here. I would like to make a few points that are arguments in opposition to this. At regards, the FERC attitudes when they are approached and . . . through this tax as part of the rate pace, we think a most likely event will be that the FERC will refer the pipeline companies purchases of the gas back to the basic contractual arrangements that we have with them on these processing agreements. As mentioned earlier, the processing agreement is a . . . partial of the sales contract, and that we retain the right

to process gas . . . . down the line. In this arrangement, or this agreement, we the producer have to bury the full cost associated with this processing. This is . . . dual processing cost, so we think that the most likely occurance would be that FERC says that you have an agreement, . . . gas purchaser, you exercise that with the producer who is processing the gas. That being the case, and we think a most likely case, the producer has two options in which to prepare the cost of this processing, the First Use tax on processing. One is to pass this through to the consumer or purchaser of these LPD products, ethane, propane, butane, etc. This is not going to be easy, in fact we don't see this as a real . . . for two reasons. One, propane and butane are under federal price controls, therefore, the amount of increase that could be passed through is going to be limited. The other, ethane, is not under price control, but is controlled by market demand. In essence, propane and butane are controlled to a large extent by market demand. But, the recovery of cost of this First Use Tax under the sales . . . that are recovered, we would have to increase the price of these products five to six cents per gallon to the consumer to the petrochemical industry and to the consumer in the rural area that . . . on propane as a prime source of fuel and heat. Being not able to pass through the . . . of five to six cents per gallon on the cost of these products because of market demand and federal price control we have to look at the other option we have, that is the economic will continue to process it. If the plants that we operate have to operate or have a control . . . interest in, there are nine of these plants that process OCS gas. To the full cost of this seven cent . . . seven of the nine plants become uneconomical at the time this bill becomes law. This means, that being unable to recover the cost of these First Use Tax products, then we have to look at . . . down at the operations of these processing plants as soon as possible of the economic. Therefore, in some . . . terms, Exxon strongly opposes this proposed legislation. We think it is unconstitutional, the tax we think will fall largely on Louisiana consumers and OCS gas producers under vitals

in the quarter complete. We strongly object to violation of contract and do not desire this strife and litigation that this legislation will encourage. We think the implications for the state of Louisiana are very serious if the bill passes and we urge the committee report the First Use Tax proposal unfavorable. Thank you.

(Mr. Leach) I would like to ask one question on the point about the processing plants. Now I understand that Exxon has nine such plants or there are a total of nine such plants in Louisiana processing gas.

(unknown) We have — interest in or operate nine plants that process OCS gas along with some gas. We have other plants, but these are the ones that are processing OCS gas which would be effected by this legislation.

(Mr. Leach) What percent of the total production in Louisiana of the methane/ethane/butane/propane of these — these nine plants contribute.

(unknown) Let me refer that question to Mr. Godbold, who is more familiar with the . . .

(Mr. Godbold) I don't have the exact answer for you — about the — about half of it. In answer to one of your other questions, I counted about twenty three plants in total in the state that process OCS gas. . . .

(Mr. Leach) A total of twenty three such plants in the state?

(Mr. Godbold) Yes.

(Mr. Leach) Mr. Champagne.

(Mr. Champagne) Yes, I want to ask a couple of questions. You figuring that this five to six cents a gallon would be contributing to that proportion that is extracted, not that portion that goes out of state or only that which it can extracting from the gas at that point or is that the whole hundred and forty million?

(unknown) That is the cost that would have to be imposed on the products that recover and the plant processing. We're saying that the liquids will have to bear the cost of the First Use Tax.

(Mr. Champagne) OK, you're saying that in other words, that no chance to pass on the cost of the natural gas.

(unknown) That is correct. We . . .

(Mr. Champagne) Alright, the next point is . . . I just want to point out one thing. You agree that there is a problem about the cost of imported oil and American oil. You think there is a problem.

(unknown) Yes, there is a problem.

(Mr. Champagne) I just want to point out to you that I feel that this committee and the members of the legislature have doubts to positively about the unconstitutionality of the act. I feel that way — it has slight doubts, reasonable doubts, no question at all. We also have in public said that it is not fair for the coal people to impose taxes and we don't get anything in return. You put where we must try this or else and we pay for the responsibility that saying that you were not able, you were not willing to try to impose this upon other people. You see what I am trying to say, sir?

(unknown) Yes, I understand. I understand the frustration that we all have about this regard.

(Mr. Champagne) Yes, so they feel the same way you feel, and I feel about the fact that we have two levels of prices of oil. Being with Exxon, I'm sure you can understand that, and you know the people have the same feelings about the fact that we are paying the price for coal added on to us and here we are sending this gas in many cases out of the state and not getting anything for the people here.

(unknown) Yes sir, I think that this points up the efforts of all of us need to make both the citizens and as the state

of Louisiana to work towards a comprehensive energy policy for the U.S.A.

(Mr. Champagne) Yes, of course I'm sure that you are aware that we are too — that we have a small voice in that. Now, let me ask you this question. Do you feel that it would — I know it is not something you would like — but do you feel that it would imply an undue hardship say if this tax went into effect, that you would have to put it in escrow or something and carry it through the and if for chance the thing did possibly get by, but I don't think that it will, but it did — do you think that that would give some belief to the people of Louisiana?

(unknown) I'm not sure that I'm following you question. In regards to the litigation, we see this as being three to five years in duration and requiring a tremendous amount of the resources both financial and manpower to reach a conclusion. We see that money — the moneys that are paid in as first use tax and held in escrow, which is going to be an effect on our cash flow as far as corporations.

(Mr. Champagne) Yes, and let me ask you one more question. Do you see the possibility that if this legislature or following legislature are to get to raise money, that the first place they will look are people like Exxon and oil industry.

(unknown) We get that feeling.

(Mr. Champagne) Well, what I'm saying — you understand that you have this to face or . . . and that's all I'm trying to point out.

(unknown) Yes sir.

(Mr. Leach) Alright, I believe Mr. Bel if you would — we need to try to wrap up this . . .

(Mr. Bel) In your statement, you said that you believe that the bulk of the tax will be paid by the Louisiana consumer. Would you kind of describe that consumer.

(unknown) Yes sir, that's both private and industrial. The ethane that is produced in the state will remain in the

state . . . about twenty-five percent or so of the propane that's extracted from the of the state for commercial, residential, and industrial use. So, in effect, the cost associated with the — will have to pass through this First Use Tax and end up on . . . this is going to impact on the consumer here in Louisiana.

(Mr. Bel) But when you are talking about the three hundred million people in the state, how many of these people would be paying the tax?

(unknown) I don't have any work out . . . I do think that we should . . . in the petrochemical and industrial sector that may be calculated through our using the Louisiana supply at this point. We would have to look outside the state of Louisiana for a supply of LPD . . . which could effect future plant locations. If you know the petrochemical industry has moved into Louisiana and Texas close to the source build the plant. With the Louisiana producing about 25% of the ethane in the country — Texas producing about 60%, there is a greater supply in Texas today than there is in Louisiana. We think there would be in effect as far as the industrial development to . . . this exercise goes to litigation . . . 5 years — there is going to be a tremendous amount of uncertainty as far as future unit investments here in regard to chemical plants or manufacturing plants.

(Mr. Bel) The only point I was trying to make was that when we talk about consumers this day and age we tend to think about the housewife in the grocery store, and I don't think that they would be affected by this tax.

(unknown) Some may not be directly, and — in some instances I think we have to look beyond perhaps there is some indirect. I can't answer your question on this.

(Mr. Leach) Thank you sir. No other questions? Thank you gentlemen, we appreciate you being here. Mr. Ed Steimel with LABI I believe he had time to come back.

(Mr. Steimel) Thank you sir. I appreciate . . . I appeared this morning or this . . . one thing you did was to benefit a group of people about the effort. . .

(Mr. Leach) We expect to hear from them later — right.

(Mr. Steimel) One point that was made this morning that I would like to clear. It might have been a slip of the tongue. He did make a statement that this bill might and I have to quote avoid the rate in property taxes . . . I think all of you know that we don't have a . . . . property tax and there is no way that property taxes could be raised to pay any state debt. It is — you pay local debts, but no state debt. I feel a little bit intimidated at being — at following that line of attorneys, law school professors, . . . I remind those of you who didn't live through the 1960-61 period, that many of these same people wrote the laws that are enacted in the five special sessions that sought to overturn the United States Supreme Court's order of desegregation, and which were overturned themselves. . . . and the attorney general's office did the same in 1975. They sought to break the law in the constitution that demands that . . . money be used to pay state debt. I suggest that perhaps you will need a new line of . . . . Billy asked me to appear on his behalf here today, and I told him I would lead off with a statement to this effect. I am going to say that I see equity in a tax of seven cents a thousand cubic feet . . . offshore just as seven cents is levied on the shore gas. I see equity also on passing that tax on to all consumers alike just as all taxes are ultimately if the purpose there is a clear need for the tax so his stated objectives of the bill are not the basis of my concern. In this bill and the other three bills did that and only that I wouldn't here, but that is not what they do, that is what they are reported to do. Just as all of us want to go to heaven, not one of us would enjoy the process by which we get there. All of us perhaps can agree with the objectives of this thing, but not with the process by which we get there. And, I want to talk about the process, just a little bit. No tax should be passed unless there is a clear need for it and no apparent alternative because all taxes

become a burden on the economic system and weaken it unless they can not be avoided. To me, that is just a philosophical position that we can take. The consumers the first use tax, the corporate income tax, the severance tax, all taxes. So, why have this to the consumer. OK, let's look at that great and need. What is it? To repeal and retire debt and a little bit protection-25%. That's hogwash. It's a rare politician who sees debt as worthy of his concern. Why? Because the debt is usually of somebody elses doing. Why should you be concerned about somebody elses debt? Now, I'm not speaking any abstract. Let's look at a little bit of history. History that our attorney-general is involved in. In 1962 many of us supported and got place in the constitution and provision dedicating all of the revenue to the retirement of state debt. Period. Along came the first settlemen of a hundred and thirty six million in 1975. Who was here then — many of you, and the governor, and the attorney-general tried to move heaven and hell to avoid spending any of that money for the purpose as demanded the Constitution. And you say, we'll do it by a Statute . . . They have to be taken libertly . . . we want to violate the Constitution to be forced to use it to use debt. They wanted to do what any red-blooded politician wants to do — built buildings and roads that might bear their name. — so don't tell me the purpose of this tax — it is a because — it won't last past the first session after the '79 election. It will take the next governor ten days to get fifty-three votes in the House and twenty in the Senate and sign the law — a whole new use for the hundred and seventy million. Mr. Alario, you were absolutely right — you can't buy the next legislator's two-thirds vote with a fifty-three votes. There is no way. He'll want to build buildings with his name on it and many of you will help him repeal that dedication. Another concern I would have if I were you is that this is a tax. A tax. I want to say it once more — a tax. Only people pay taxes, and only people vote against legislators who vote for taxes. Why would you vote for a tax when everyone up there and back here agree that this tax won't produce one

red cent during the tenure of most of you people in this legislature. Won't produce one cent. It will be in the courts and you can't spend it. So, what you are really doing is passing is a tax that your successor can spend for purposes the opposite you chose yourself on and give your vote in passing it to defeat you. I suppose next election or the next one. You are passing a tax for your successors to play with. Many of you already have a couple of tax votes to your credit or to your debit and many voters will be told that they were not needed. We would like you, and please don't make it impossible for us to help get back here next year. Another concern that we have with this whole idea of tax credit — we've had a little experience. You all had a little experience last year, didn't you, with tax credits. Remember the national gas tax credit. It was enacted in 1973. It was repealed in 1977, a prior national gas tax credit was also repealed in 1972. They don't last long. What happens to tax credits is that they become a subside after four years. The difference between tax credit and a subside to industry in four years. Now, without the tax credit, which nobody in New Orleans is . . ., even the dumbest oil company would oppose to First Use Tax. What amazes me is the naive of some who seem to believe that this tax credit for the first use tax will provide. We'll forget this tax. Hope you have it recorded because we tried to play it back last year, but we couldn't find the recording. What happened back in '73. There are many reasons why this tax credit won't survive. Now . . . is that this legislature is perhaps two or three or four year will repeal it. That is or secondly, it will be held unconstitutional. The tax credit also will exceed the severance taxes paid by many companies whom as a separate tax is defined as they are and as offshore production increases as they are. And the differences have to fall on the Louisiana consumer. And this will be more and more each year as the off-shore production exceeds the on-shore production. Now, the greatest impact will be on the Louisiana . . . because the impact will be felt on the petrochemical industry and on the rural . The . . . the petrochemical industry, . . . primarily, will be

priced far above present level so it will make it less desirable to expand in Louisiana. So again, Texas gains at our expense. . . . to why. Think of the injuries to the construction industry when the petrochemical industry decides to tread water or maybe with all the uncertainty why not fill that Ethyl plant in Houston where they have a big plant instead of in Baton Rouge where we don't know what the situation is here. Remember, that sixty percent of all industrial construction is in the petrochemical industry, and that is year after year. Last year it was exact one point four billion dollars of the two point three was petrochemical. You can take it for the past ten years and you will find the same thing. This is the industry on whom we are the uncertainty. If I were the construction industry I would be up here worrying about this. How much do you really want a cash debt on that number one building and producer and producer of the construction job in Louisiana? Finally, are you really ready to say that you want to use the law to break contracts? This is my greatest concern about this piece of legislation — to break contracts between two knowing parts. Louisiana continue to brush away the bad ends that it doesn't really deserve any longer if you break these contracts and bring that back are you really ready to use the law to valid contract, if it were nothing on this bill that ought to be enough for any man with integrity to vote against this bill. None of us believe the court will uphold this but why would you want your name on such a damageable item. Yet, it were not in the proposal it simply couldn't be pieced together. It's all tied up in there. I ask them to remove. That. They can't. We can't support . We can't support violation of the sanctity of the contract. Of course, we all get lawyers on both sides of this thing, and that's what lawyers are for, to be on both sides. This is a lawyer's bill. Brother, will it put them to work. This probably would retire many of them. The author simply has to assume and assume and assume and dream and dream and hope that all of us will his fantasy of purpose, his fantasy of technique, his fantasy of a free

right for everyone in Louisiana. All be it we do agree with his objections, what we have here is the of the first . It reminds me of Fantasy Island, a popular TV show, where all your dreams come true. But, Fantasy Island let me remind you ends every episode when the dreamer transports back to reality. So, let's run through that. The dream here is that the tax will be passed on to the eastern consumers by placing the tax on transportation and a series of other activities. In tax, it will fall down in the process. But we don't want that because that means it falls on Louisiana people. And, this bill wants to hit only the easterners. That's what we are told. So, we just the contract written in the pipeline and the processors. They won't get anyone. Breaking contracts is really only a sin in the real life. It's not a sin on Fantasy Island. Processors, of course, of this bill to themselves Argue in favor of abrogation in court knowing they are going to lose. And they will. Then the great good government says sorry fellows we tried. Yes, you'll have to pay it. They are not going to say, sorry fellows we tried, we are going to repeal the bill, yes, you will have to pay it, until Fantasy Island is over. Reality returns. Of course, what does it really matter? It just the oil company. They can pass it on to the where the petrochemical company who may ease up on their expansion here because ethane, propane, and butane are cheaper in Texas, and those that do continue to operate here will have to pass on the tax even if it means tightening her belt and laying off a few thousand people. In the end even the First Use Tax will get plain ordinary people all taxes, due, and the little people get hit the hardest, and that's what the people will use in opposing anyone who runs for reelection who has voted for one, two, or maybe three or four taxes to retire debts. That is a really poor . Louisiana people may have believed that kind of thing once, but they are a little brighter than that now, and there are more people around now, who can help them with their if they forget. Thank you.

(Mr. Leach) Any questions of Mr. Steimel. Thank you Mr. Steimel. Mr. McVea Oliver wants to make a statement only. Mr. Oliver.

(Mr. Steimel) Yes, your honor, The people I represent are Transco . . . and United Gas. They want me . . .

(Mr. Leach) I'm sorry McVea. I want you to come forward so you will be on tape, please. If you would, as fast as possible.

(Mr. Steimel) I'm McVea Oliver, attorney in private practice in Monroe. I'm representing Trunkline Gas Co., Transcontinental Gas Pipe Line Corp., and United Gas Pipeline Co. These corporations have authorized me to say that they are opposed to the tax, that concerned about the

(Mr. Gibson) Mr. Chairman and gentlemen my name is George Gibson and I'm an attorney for Amoco Production Company. I appeared here today to briefly speak to you on the viewpoint of the producer and as this measure might affect that producers and I also want to speak to you as a citizen of this state and its nation. Most of the points that perhaps I would like to make as if we were in court or a higher court have been made and made very easily by people appearing before me. I simply want to repeat those things and I want to tell you that I really don't have any answers. I do have some questions and I do have some fears that I want to tell you about and some questions that I want to present to you. I might say at the outset that the author, primary author Representative Tauzin has given to those of us interested in this matter every opportunity to make recommendations and suggestions and he has accepted many of these higher powers. Our fundamental suggestions that he withdraw the matter from the files of the House he so variable rejected repeatedly.

I would like to say this Mr. Chairman and Gentlemen, from our viewpoint we fear the failure of tax credit procedures that are contained in House Bill 1187. We feel the failure of the past forward procedures that are in this

measure before you now is House Bill 768. We fear that the economical burden with this tax will rest on the producer by failure of this Section 1303C in House Bill 768. Notwithstanding the assurance of Representative Tauzin and Professor Bacon, I had the honor of being a student of Professor Bacon and still have the honor of being his friend and still being a student under him. But notwithstanding this assurance we fear this matter is a failure. We also fear gentlemen that the proponents of this measure who have given us these assurances, Billy Tauzin, Gov. Edwards, we fear that down the line when we may need them in the event things do go wrong not as anticipated by them but when we do need them for help and relief that they may not be here. Billy is young, dynamic and I'm told ambitious and he may go on to bigger and better things. Certainly the government would go on to better and bigger things or maybe they will all retire to a comfortable practice. At any rate we fear that our friends who give us these assurances today sincerely given to us will not be here when we need their help. I know that there have been a lot of changes brought about by a series of supreme court decisions and I won't go into that while I accept the fact that there is encouragement for those that believe it may be this type of answer withstanding the constitutional tactics. I will not go into that at all but just to simply say I recognize and appreciate the ordinances that are being made. But now a few questions, you well know from what you have said and the questions you have asked here today, you well know that this is not simply just another plain tax issue. This is a philosophical struggle you might say. I would suggest that perhaps a law review article would be appropriate, it could be termed exportation for taxation a new era by Billy Tauzin. Gentlemen, seriously even if this exportation taxation is accomplished we ask you this, is it wise? Does this tax not invite retaliatory action by other states? Does this movement not actually encourage adverse response from the federal authorities. No one has noted here today but I must do so now that this state has been receiving

funds from the off shore area under the coastal zone program from the federal authorities. Would this type of thing make it more difficult to accomplish the work that secretary Fischer of the department of transportation and development has been able to accomplish. Gentlemen would not this kind of action tend to vulcanize our country. Are we not in fact one nation, I know that the proponents are sincere and the intentions are fully harmless, but I ask is it wise why for us to take this action to strike back at the citizens of other states. Certainly this is going to polarize our antagonistic positions. Would it not be better gentlemen to use the better points of our elected leaders employ logic and reason to reach these people who have not treated us fairly to help develop a sound national energy policy to really promote harmony among the states and the people of this nation. And I don't know for sure because I'm from here and have always lived here, but I honestly don't believe gentlemen the people in the north oppose the state of Louisiana or the people of Louisiana or oil and gas industry from this point forward out of meanness. I think they do it out of fear and out of ignorance. They fear something dangerous and ugly might be put down next to them. They've been mislead by self-seeking political figures perhaps by self-appointed experts who oppose progress in any form. I honestly believe gentlemen that the taxpayers of this nation and each and every one of us is part of that group we are one body and is it not a fact that any tax levied by any level of government at any place upon any taxpayer in the final analysis affects each and every one of us. Should the tax leveer considering this type of philosophical exercise great restraint I will not presume to tell you what to do but maybe I can presume to suggest two things. Do this thing, prove this measure only if you are fairly satisfied that it is good and right and proper don't do it out of a feeling of retailation or meanness or for bitterness or cynicisum, don't do it simply because you can do it do it only until you are satisfied with what is right. Thank you very much.

(Mr. Leach) Mr. Chairman I know that I was late and I just want to make a very brief statement on behalf of Shell to concur in the concerns that have been expressed here this morning by Mr. Brooksher of . . . Association the Exxon representative and the comments made by Mr. Gibson, I want to say that the outset on behalf of Shell that we acknowledge Representative Tauzin's efforts in working with industry in recent months to try to remove as many of the fears that we have as possible. We understand that this bill is designed primarily to protect Louisiana producer and we appreciate Billy's efforts in that remark. But I must say to you, quite frankly Mr. Chairman, that there are concerns in this bill that we don't believe in and this legislature can fully correct. First of all there are basic constitutional questions involved concerning the First Use Tax concept itself. But so far as we are concerned the primary exposure to us and its tax paying citizens and producers in Louisiana is the abridgement of contract provision in the act. We see this First Use Tax being upheld if it is held at all on the processing of gas. Assuming that to occur and assuming that the abridgement or abrogation of contract language in the bill is stripped on constitutional grounds. We see no way that this tax can avoid coming back on us as producers, and even omiting the question as to whether or not the tax credit will be pertaining to our further legislature, we are faced with a situation whereas our state-serverance tax liability decreases in further years we have deminished basis against which this will be offsetting. Based upon these concerns we do have to state this morning that we believe this is a bill that will ultimately impact in a very effortless way Louisiana producers. Thank you.

(Mr. Rutrough) Thank you Mr. Chairman and members of the committee I just want to go on record as saying that Tenneco representing Tenneco Oil and Tennessee Gas Pipelines as opposed to the bill, I think we stand to get hurt as much as anyone to the tune of 51 million a year so we have a very great concern on this and we just want to go on record as opposing.

I assume that we have heard from those who have filed an interest card early this morning. Did I miss anyone who had indicated an interest to speak either in favor or is Mr. Jimmy Morrison in the room at this time. Jimmy has indicated that it is his desire to speak in favor of this representing Louisiana Association of Educators. Mr. Tauzin if you will we will pass this.

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

I, Jerry J. Guillot, Director of Committee Staff Services and Custodian of Committee Records, do hereby certify that on this day, September 8, 1980, that the foregoing is a true and correct copy of the transcription of a tape recording made at the June 6, 1978 Meeting of the House Committee on Ways and Means concerning House Bill No. 768 of the 1978 Regular Session of the Louisiana Legislature, and that the tape used for transcription was a tape used to record said meeting and that said tape has been in the constant possession of my office with the staff of the House Committee on Ways and Means.

JERRY J. GUILLOT, Director
Committee Staff Services
Louisiana Legislative Council

Hearings on H.B. 768

Before the Senate Committee on Revenue and Fiscal Affairs

(Hearing of June 26, 1978)

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(Mr. Tauzin) Gentlemen and members of the committee, what you have today is a package of three bills which includes House Bill No. 140 which is a constitutional dedication of funds from the first use tax. House Bill 767, which is a statutory implementation, parallels the constitutional dedication and goes a bit further in implementing the provision of the constitutional amendment. And House Bill 768 which is the actual first use tax itself. Before detailing these bills for you, the Governor has requested his right to speak to you for just a minute on the general concepts and his support of the constitutional amendment itself.

(Governor) Thank you Mr. Chairman. The unexpected interruption of his recorder and the sound it brought to this room cause me to suggest to the members of this committee that we might all strain our natural ears to try to discern a sound or rather three different sounds that are bouncing against the ozone even as we talk today. Two are man made. One comes from the action of nature. That first blush one would think they are totally unrelated, but they vary very important relationships to the state's economy in our future. They are first, if you will lend your ears for the effort to the humming sound of computers in the financial centers of the world ticking away the interest that is on our state's obligation and second the hissing sound of natural gas passing through pipelines as it reaches the southern border of the state and is processed and then goes on to other parts of the country. And third the kissing sound of the Gulf of Mexico as it waves lap the borders, to erode the Barrier Islands and shorelines. Humming, hissing, kissing all out there but having a definite relationship to the bills we have today. A definite relationship because we want to try to interdict the hissing sound of the gas and to capture some fruits and revenues for the state to toll the humming sound of the computers as it calculates the interest rate. And then to stop the erosion of our Barrier Island and the coastal area of the state of Louisiana. So important to the state and its future is this legislation, Mr. Chairman, that I have

retreated from a strong entrench position that I have had since 1974 in opposition to any constitutional amendment. Because the constitutional amendment which will be before you today would put into our constitution a commitment by the people of the state to use the funds generated by this legislation. The first 25% of it you will prevent the erosion of the Barrier Islands and the coastal areas of Louisiana. Because by doing that not only do we help save our natural environment, but we also guard against the take over by the federal authorities of increased areas of our land area. It is estimated that 16 acres a day of soil falls into the Gulf of Mexico, which I think in a quick analysis translates to 5,000 acres per year which, even at the minimum price of $1,000 per rate, translates to over $5,000,000 per year lost to the Gulf of Mexico. Because as the coast erodes its ambulatory nature is such that the coast line of the state also changes under U.S. Supreme Court decisions and as we lose an acre of coast lien, the federal government gains an acre of water ways south of that area. Therefore, it is indeed very proper that we use a portion of the fun generated by the production of natural gas in the Gulf of Mexico from federal waters for the purpose of saving the coast line from further erosion. Second, 75% of the money will then be dedicated to a sinking fund which will be used to retire the state's debt. We were careful, Mr. Chairman, to place in the constitutional amendment a prohibition against the use of the funds to retire current state debt so that future legislators could not substitute monies generated from this fund for the general obligation of the state to pay state's debt on a regular basis. The importance of that being that it is to ultimately look to the day of the liquidation of the state's debt, hopefully, to at some time in the future in which we all be alive to be able to say that we participated in a bold venture in 1978 to make it possible for Louisiana to be the first and probably the only state without any appreciable state debt in a period of a decade. Additionally, there will be arguments made, and I close on this notice, to the constitutionality of this entire package. May I say first that no one and I repeat and emphasize no one

can tell you whether the legislation is constitutional or is not constitutional. The state of the art is such, the uncertainties of constitutional questions, the change of attitudes on the part of the U.S. Supreme Court are such that no one can really guess with any degree of knowledge as to what attitude the Supreme Court would have when this legislation is ultimately considered by the U.S. Supreme Court. Scholars of equal authority, equal discipline, equal concern, disagree at 180° turns on the question of constitutionality. I am personally convinced that because of the trend of recent decisions and the way the legislation is written, that in spite of a serious constitutional attractive, it will be ultimately be held constitutional, if in fact that is correct, so be it fine, wonderful. If not at least we will get from the Supreme Court in the process, guidelines that we or some future legislature may be able to use to try to again tackle this problem to benefit people in Louisiana. I hope, Mr. Chairman, that this committee will pass out this legislation, that it can be considered by the senate. I want to say also that this past Friday night I was in Houston, Texas for President Carter's visit there and not less than eleven legislators and state officials and people in the political arena in Texas came to me and chatted briefly or lengthly about this legislation and commented about its boldness, the innovativeness of it and the fact that they were waiting anxiously to see what the outcome would be, apparently interested in knowing whether or not Texas as a state and also as a gulf producing state might be able to benefit from our leadership in this particular area. Not one of these officials suggested to me that we were approaching this problem erroneously, that we were making an error. All of them left me with the distinct impression that they concurred in the legislation and were anxious for us to succeed so that Texas could follow suit.

(Mr. Tauzin) Mr. Chairman, following through on the Governor's comments, I think it is important that you also know we are receiving a request from the states along the eastern sea board for similar information. New Jersey,

Connecticut and Puerto Rico have recently contacted us in reference to the legislation. There is, we believe, a growing trend in the nation among those states that will be energy producers to look at this as a means of compensating the various states for taking a risk and suffering the impact of producing energy for the rest of the nation. The Congress, and I want to start out by telling you, in the energy impact act presently before them sponsored by the Carter Administration actually conceives of this, a user tax on energy produced in the state as one of the several taxes, including severance taxes, that the tax should use to match federal funds which will be forthcoming to provide energy assistance impact to those states. But even the federal government is beginning to come around to the notion that this is indeed a right and just cause as we embark upon today. The particulars of the bill before you

(Senator Eagan) Just a minute. You have finished with your overall comment on the package?

(Mr. Tauzin) Yes sir, except to say one other thing that is probably pertinent right now. What you will hear today is primarily I think in opposition is philosophical arguments and constitutional arguments. I want to say for the entire package presented to you today, it has been amended as far as we can practically go to guarantee against any impact upon producers and processors and people in this state who would otherwise possibly feel some impact from the imposition of the tax. In order for you to better understand what we have done, let me illustrate by way of chart example. What happens in this state in regard to the resource we are talking about and we are talking about a limited resource. We are talking about natural gas brought into this state from outside our boundaries that is not taxed by some other jurisdiction. At the present time that practically means OCS federal gas. That gas is produced outside our three mile limit in the federal waters. It is piped in to processing companies in Louisiana and then the dry gas is shipped out of state. Approximately 5% of the product is removed in the processing stage as liquid — propane, butane, methanes

and what have you. Additionally, you need to know that that particular amount, the 5% is exempted in the bill. Now what we are talking about is the tax against the pipeline companies who own the gas and who own 95% of the product which is a measure of the tax. The tax is on the activity that occurs in Louisiana. The transportation, handling, the processing of the gas in Louisiana as taxes against the owner measured against the stream of his product which is 95%. In about 15% of the cases the producer is still the owner at the processing stage. In that event, in those cases there is a separate bill which Representative LaBorde is author which will grant to those producers a tax credit against the severance taxes for any amount of this tax they could not pass on to the pipeline company. So the end result with the LaBorde bill in context. that we have is a tax that is going to fall primarily on the owners of the pipeline company. And it is important to know that 98 and a half per cent of that product upon which we measure the tax is shipped out of state. Only about 1 and a half per cent of the product remains as dry gas remains in Louisiana. There is a separate bill also authored by Mr. Bagert that deals with the impact of that one and a half per cent. Now what you are going to hear today also from the opponent, is there concern that some how the pipeline company may not be able to pass a tax to their consumers out of state. Gentlemen, let me tell you how it works. The pipelines companies under the Federal Energy Regulatory Commission (FERC) is allowed a rate base pretty much the way our Public Service Commission allows rate basis to utility companies in Louisiana. What happens when this tax goes on board, and it will begin collecting in April of 1979 which gives pipeline companies sufficient time to put the new rate base into affect. The pipeline companies will then be in a position to request a new rate base from the FERC. The rate base will include any changes in their rate structure — inflation, higher cost of doing business, for labor, supplies A-J production of the volume in there lines perhaps in this particular tax and any other costs for operation they have. This rate base case then goes to

FERC. It is projected that FERC will probably withhold final decision of the rate cases presented to them by the pipeline companies until the courts have finally decided the constitutionality of the tax itself. In the meantime, what happens is after a five month period of delay of the notice period, after that six month period the pipeline companies actually begin collecting in the interim the new rate base from their customers and with the provisions that they will refund if and when the Court shall rule that the tax is not constitutional, therefore, not allowable in the rate base if that should occur. So what you have in this package of bills is in affect a set of legislation that gives us for the first time a chance to tax the activities associated with a product that is untaxed in our market place. That particular product competes in the same market place as the natural gas produced in Louisiana for which customers pay a 7 cent per MCF burden. That particular product is unburdened of such so the tax is meant to provide equity of treatment in the two products in commerce. To provide that both products will bear a 7 cent tax when there sold to customers. What you need to know secondly, if the mechanism we provided in the bill failed, if the producers here who have sold that gas at the well-head, if those producers are made to pay any part of the tax, then the tax is null and void. That is in the bill. I want you to know that in advance. It is impossible for the producers and the processors, the people who manufacture the methane, butane and propanes in this state, to suffer any financial impact of this bill. The LaBorde bill we have has an amendment that is going on that is even going to cover the cash flow problems in the interim so that companies that may feel an impact until final determination by the Supreme Court will have their cash flow problems taken care of interim credit problem from severance taxes. There are mechanisms in the bill which provide reimbursements for credits so that the state general fund is not hurt by the granting of the credits. The last thing that you need to know is that in the bill there is a clause that is essential to the whole process that provides that certain languages in some of the producers contracts. Let me describe to you

what language that is. When the producers sell their gas offshore at the well-head, they reserve the right to process it before the pipeline company takes it out of Louisiana. In that reservation they agree to pay the cost of processing. Some very few of the contracts even mention taxes. The bill we have before you provides that in knowing that shall the court interrupt that language to mean that the producer must pay this tax which is on the owner of that 95% of the product. The producers are going to claim that some of abrogation. I want to tell you that it is not abrogation under the law. The law provides in many cases where the public interest is concerned and where contracts and clauses in the contract that are not the main portion of the contract, the main portion of these contracts. The contracts with or without these bills will have full affect. The producers will pay the cost to process it. The sales will go through as scheduled under the contracts. There is no abrogation of the contract or the provisions in the contract. The provision that we have in the bill is meant simply to protect the producer against the pipeline company trying to pass the tax back upon him. So an interpretation of that language in the reservation of the right to process. So you will be hearing that and I want to brief you on it in advance.

(Mr. Barham) Billy, I think you have answered my question, but I'm not sure. I am not sure that I understand it. Let's assume the situation where the pipeline, the owner of the pipeline has made an application to the federal regulatory authority to include in his base rate this tax. And let's assume that there has been an attack on the tax by someone as far as the constitutionality of it is concerned. My first question is I believe you said that the pipeline company will be allowed to go ahead and collect this tax.

(Mr. Tauzin) A likelihood is that this

(Mr. Barham) A likelihood alright. There is no provision under the federal law for any injunction to prohibit the collection of the tax during the time all the court

proceedings are going on and during the time that the federal regulatory agency is trying to decide to whether or not include this in the base rate.

(Mr. Tauzin) There could be such a case filed. The situation is this. The pipeline companies who will require about three months to get their rate base together. Then they file it. The thirty day notice period and a five month suspension period. A suspension period was put in the law to suspend the collection of the new rate base for that five month period. It is conceivable for someone to come in and try to prevent the pass through during that five month period. Pipeline companies, however tell us and they brought to us a number of cases that they had including taxes — ad valorem taxes, the various other taxes that were passed through in their rate cases. What generally occurs is FERC says well if we can pass it through now, we are going to consider your case and examine the legitimacy of all the facts and allegations you have in your new rate base, because you see it is not going to be just this tax. There is going to be a lot of other factors involved in the new rate base such as the pipeline company doesn't have that much volume of gas. So they need higher cost per unit to cover their cost of operations. During that period of time, after FERC is going to collect it, if you are wrong, if we find you are wrong in your rate base, you will be charged with reimbursing your customers. That has been done in the past also.

(Mr. Barham) Alright, now let me ask you this. In that type situation what does the pipeline do with the money. Do they refund. When they collect it under these circumstances they've got to give it to the state.

(Mr. Tauzin) Yes sir.

(Mr. Barham) Alright what do we do with the money during this pending time. I don't think we ought to spend it.

(Mr. Tauzin) We can't. It is escrowed under the bill. The only amount that is used is that amount necessary to

refund any credits and that is done under a waiver of refund clause. If you want the credit, you have to waiver a refund. So that the total amount that we might be liable for in the event that we should lose the litigation is available for refund at 6% interest. We are likely to make more than 6% interest on it in investments. We are actually going to probably come out a little bit ahead on it.

(Mr. Eagan) So that everybody can follow, I gave you the opportunity to open but I think the proper way now is to take up one of the bills. Which one do you want to take up?

(Mr. Tauzin) The first is a constitutional amendment itself. House Bill 140 is the joint resolution to amend the state constitution. It sets out the first use tax fund which is created and established in the treasury as a special and irrevocable trust fund for the deposit of these proceeds and the interest in the profits. This trust fund is created for this particular tax bill and for any other tax bill that might follow it on the same resource. The reason that we do that is the same as the governor said that it is possible and we have got to recognize it, that the courts could rule that we have some constitutional problem with our act. In that event it is conceivable and highly likely that the legislature would then meet and cure those constitutional problems as the court defines them for us as we think they will have to. In the event, the legislature came back and reestablished it under those guidelines set up by the Supreme Court then that new tax would also be dedicated under this particular fund. So that what we are dedicating is the taxes recovered based upon that natural gas resource and the federal OCS. Now the way to distribute it in the amendment and in the act is that it goes into two funds. 75% goes for the payment of state debt and in that 75% there is first built up a 500 million dollar initial fund account and the purpose of that is to establish within the constitution and in this trust fund a large volume of money this 500 million dollars that can continue to earn interest for us. It will not be taxed itself to pay state debt. So that it will always be earning interest for us to pay state debt. That of course, is then to make sure that when

the resource actually runs out that the fund will continue working for the state. The interest on that 500 million dollars can be used to pay the state debt and any other monies accruing into that 75% account can be used to pay the state debt as the account accrues. Now the bill provides that current state debt will not be paid. This goes into the Tideland case. Remember the tidelands decision ruled that you couldn't use the tidelands money to pay the debt of that particular year. You have to pay the next year debt or the future year. The bill provides the same mechanism so that it can't be used to take care of the other state money that would be used to pay the current obligations of the state. Once that 500 million is built up, then the money continues flowing into the treasurer can use it to do just as she has in the tidelands case. To buy debt in advance of maturity where it is our advantage to do so either on the open market or through bond redemption or to pay debt in advance of maturity. The second account is the Barrier Island Trust Fund Account. The governor gave you some very kosher reasons why that account is set up. Not the least among is the fact that the fiscal integrity of the state depends upon it. You recall that the last 53 million dollar sale that we had off shore? That was right at the 3 mile limit. If we lose our Barrier Island, and many cases they are nothing but shell reefs and sandbars, if we lose those things and we are losing those things very quickly right now, the tidelands decision provides that that lines moves northward with us and as a consequence the land within that 3 mile limit are lost to the federal government as that line recedes northward. That 53 million dollar track could have been lost, could be lost if we continue to lose our Barrier Islands. I don't have to tell you the importance of them from any other respect. Hurricane protection, protection of the wetlands which are invaluable to us for the production of resources, and for the estuaraties that are contained there. But there is another good reason why we need to do this. Part of the constitutional undepending of the first use concept itself is that the introduction of this product into the state has impacted severely and continues to impact severely upon

our state. The many pipelines, the canals that are dug and Tony you know what I am talking about, you live in that area, all of that activity on our coast line and our shore line have created all sorts of lateral canals and has impacted severely upon those wet lands and many colleges believe that it has contributed to the erosion and to the decline of those wetlands that is occuring today. As a consequence one of the undependings of the first use tax is that impact is something that the state has suffered. As a consequence we have the right to ask the product of through that activity to bear some contribution to the state to compensate for that impact. Particularly in view of the fact that the product is going to other parts of the nation which have for many many years resisted producing that very same product for themselves, because they didn't want to endure those impacts. The equities are there. The constitution under pending on the impact is important to us and that is one of the other reasons for the Barrier Island Trust Fund Account. The state treasury is authorized under the amendment to invest all the monies on this deposit in accordance with law for the investment of idle funds, and to use the investment earnings of the initial proceeds account just as the other money accummulated for the payment of state debt. The bill provides, Senator Barham, that the money is escrowed. It shall not be used for the purposes ennumerated until the first use tax has been determine available through the courts. During the time of the escrow, the only money that is transferred out of that account is what ever is necessary to pay any credits that are authorized in the bill and the other bills provide that for those credits to be received they must be a waiver of refund so that the account is fully protected in that mechanism. That is the constitutional amendment. You have heard the governor's strong endorsement of it. It's the only constitutional amendment that he does endorse and he believes that it's of that importance to the state that we permanently dedicate these funds for these two very important fiscal integrity reasons.

(Senator Guarisco) I hate to speak about this particular bill, but I think most of the argument and most of the discussion is being whether or not the first use tax is a good idea and it would work and whether it is constitutional and so forth. My problem is simply should we amend the constitution for this purpose. I think that's the issue that is before us. Not how much good it will do or doesn't do. In the 1921 Constitution was supposedly an example of how not to write the constitution. We probably had the worst, if not one of the worst constitutions in the U.S. One of the reasons was that it would strip with constitutional dedications of money and tax money. It is improper to draft a constitution and is improper to lock monies into that type of document. I see no one speaking against it, and I know that I might be somewhat prejudice because I was there so I am not prejudice. I think that a lot of things are wrong with it. One is I think it is premature in that we don't have the money anyway. We don't know if we will ever get it. I feel that to amend this constitution was somewhat expedient, because maybe in order to get some votes on the House side we had to amend the constitution that we are going to dedicate it. The same people who when we wrote the constitution wrote articles and appeared and lobbied and said that we should not amend, we should take tax dedications out of the constitution and we are putting them right back in. What it's saying is that the legislature and the government in this state in the future is going to be irresponsible and I don't think that we can treat people who represent other people as children. And I'm not to say. Who knows whether we might be able to want to use some of that money to do other things. Is that totally irresponsible. I don't know. I think the style in drafting it looks like legislation. It doesn't look like constitution material. It does not conform to the style in drafting of the present constitution. I don't know if we don't get the money, Mr. Tauzin. Suppose we don't get any money whatsoever for this source. Does this constitution amendment self-destruct and not be a part of the constitution?

(Mr. Tauzin) Well, of course not. I did point out to you, Tony, however that the bill provides that not only the money raised from this tax, which you need, which may not be available to us in the long run, but we can see that. Any monies derived from that OCS resource, the federal source, would be dedicated. The reason for that is, Tony, we do expect if this legislation meets with some sort of constitution problem, the legislature will want to come back and address this problem and correct it. I think eventually, I predict eventually we are going to win this battle. In the courts the first time, or, if not in the courts, the first time in the legislature the second time around. This money is going to be ours one day down the way. The reason for the constitutional amendment is very simple. We are talking about two billion dollars or more in the next ten years. We are not talking about a tobacco tax. We are not talking about something that is so critical to this state. So important in debt retirement for debt retirement purposes. So critical in value and protection that I don't want the sponsors of the legislation from the beginning to see it go for any other purpose. I frankly am afraid. I have seen what has happened in the time that I have been a legislator even the tidelands decision. This is how we all succumb to the temptation of trying to spend some of the tidelands money for current debt operations. I was as guilty of that as you were, all of us were. I think that the temptations are from the state particularly when oil and gas is beginning to run out in this sate are going to be tremendous to tap this resource for other purposes. It will relieve the state burden in the long run. If we pay the state debt in the long run and relieve that obligation of the state operating fund to fund that debt in the long run. It's going to have that good effect on the state treasury. But if we open the door and allow future legislators the right to come in and tap it, that I'm afraid all that good intentions, purposes of today would have been lost. I'm afraid that could happen, very well would happen. I think it is so important that the governor agreed that the people in this state ought to have a right to say yes it is important enough to put in our constitution. They agree like you,

Tony, that it is not so important that they don't want to amend the constitution or have that right in November when we have a statutory dedication to follow it that will protect us and make sure that it is at least dedicated as far as we can go. But I assure you that I have been around the whole state talking about it. That's the one question that I have been asked more than any other. It's the one question that the oil people have asked in all these debates. It would not be so bad if you would guarantee us that this is really what it is going to be sued for. You have heard that over and over again. I think that the people deserve a chance on this tremendously important asset, two billion dollars over a ten year period, not just an ordinary little tax, to make sure that it won't be dissipated by some.

(Senator Guarisco) You see what I have a problem with. I think everything that you are saying is absolutely correct. I think it's to say that I don't want to dedicate the tax sounds irresponsible, yet I want to try to feel that first of all that we maybe have conditioned the electorate to distrust us. I don't want to, I think the answer to this type of issue is to elect responsible people to government and not to hogtie future legislators and the future government of the state. I just want to mark my protest and I am for the rest of it. I think the idea is good. I think the statutory dedication is good and everything else, but I just am afraid to lock in this to the constitution. I think one day we will probably be sorry.

(Senator Hudson) One of that initial proceeds account the only thing that can be expended for so called emergencies is the interest or the earnings which resulted from the investment.

(Mr. Tauzin) Well, actually the initial proceeds account can not be spent period. It is just the earnings.

(Mr. Hudson) And only pursuant to the restrictions which are imposed upon by the Bond Commission.

(Mr. Tauzin) That is correct. And that is one of the reasons to further answer Tony, the amendment is as long

as it is. The protections are all specified in here very carefully.

(Mr. Hudson) I just wanted to know if you concurred with my reading.

(Mr. Tauzin) You are correct.

(Mr. Hudson) Also, I don't particularly have a hang-up about constitutions amendments although the proponents of this bill have been successful in killing several of my bills by constitutional amendment. I guess it is how important it is and based upon how many votes you have. I can see a distinction between this and where you are dedicating funds because of the uncertainty of the legal success of retaining those funds to where you dedicate a source of money which is subject to sections of the state or various constituency buying for money and blocking it in that way. So I can see how this would assure the people that if it were successful that we know the purpose of which they voted on it and if it wasn't that they were assured of seeing that remedies were made without imposing a future tax.

(Senator Eagan) Are there any other questions? If not, Senator Sevario moves for a favorable report.

(Senator Guarisco) I object.

Roll call vote taken:

YEAS: Barham, Braden, Hudson, Poston and Sevario

NAYS: Guarisco

(5 to 1) Bill reported favorably.

(Representative Tauzin) Gentlemen, I know you can act quickly on it. House Bill 767 is the statutory dedication that parallels to the constitutional dedication that sets up the mechanism for the use of the Barrier Island Trust Fund which is a provision of the secretaries of the Department of Wildlife and Fisheries, Natural Resources, and Transportation to jointly meet each year and recommend to the Governor those projects that are being most useful and beneficial to protect the Barrier Islands. They

are being included in the governor's annual budget to the legislature.

(Senator Eagan) Are there any questions? Senator Sevario moves for a favorable report. Is there any objection to a favorable report? Hearing no objection the bill is reported favorably.

(Representative Tauzin) Mr. Chairman and members of the committee, the next bill is the first use tax itself. Again, let me hit it real quickly for you and then perhaps I can answer your question. The first three sections that are in Section 1301 describe the state policy. They are basically the conservation of our resources and inequitable treatment presently provided for natural gas produced in Louisiana and that which is brought from outside Louisiana. Secondly, the impact upon our waterbottoms, Barrier Island, coastal areas because of the production and the transportation and development of that resource in Louisiana. Thirdly, it is declared that the first purpose of the tax is to require the extraction of exaction rather of a fair and reasonable compensation of the citizens of this state for the cost incurred if paid with public funds costing you — the benefit of the owner of the natural gas which is produced beyond the boundaries of Louisiana. So that we are saying in effect that the purpose is indeed to make the owners of the resources who benefit from it compensate us for providing the state services and for excepting a risk and the impacts that would come along in providing this resource for them. We have defined use which is the most important definition on Page 3 as the sale, the transportation in the state to the point of delivery and — to the processing plant. The transportation to the point of delivery at the end of measurement, a storage facility to transfer the possession of a control or processing for the use of manufacturing treatment action to a point within the state as the uses that are declined. Now the first use that occurs is the use that is taxable. We have a roll-over provision so that if the courts should rule that the first use that we detail here is a non-taxable constitutional use, then the next use becomes the tax that

we use so that we have a roll over of those uses. The first taxable use under our constitution becomes the first use tax under this bill. The owner is specifically declined as a person who has title to and the right to alienate the natural gas despite the fact that it temporarily surrenders possession or control of the product to the producer at the processing plant so that we are tying it down to the owner of the natural gas itself which is as I told you in 85% of the cases is the pipeline companies. The next section imposes the tax and measures it at the rate of seven cents per MCF on the product. That is to correspond to the state severance tax. This tax, the user tax, corresponds to our state severance tax. In subsection C is the section that you will probably hear from the oil companies on. It is in furtherance with the policy we described above. The tax is deemed to cost the associated uses made by the owner in preparation for the marketing of the natural gas. It is not to be construed or interpreted as a part of the cost of processing which the producer has to pay under his contract and that particular clause is the one which says that the courts shall not interpret those contracts to allow the pipeline companies to pass the tax back on the producer who would have to pass it on to his customers who only own 5% of the resource and we declare that to be expressly against the public policy of Louisiana. The other provisions of the bill relative to measurement and commingling attract the language in our severance tax statues to provide the same mechanisms by which the Revenue Department would measure the tax. The Collector of Revenue, of course, has the authority to promulgate the rules and regulations and to require the reports and reimbursement. The bill provides that the act is effective immediately, however, the tax will not be collected until April 1979 That is to give the pipeline companies the nine months they need to begin collecting the tax in their rate base from their customers. Now there is only one pipeline company that tells us that they will have any difficulty in meeting that deadline and that is United Gas who has presently a rate base case before the commission, but they are quite satisfied with the April date. They think that

this will just about accurately cover it. The bill provides and this is important that if Subsection C in Section 5 of the Act, that if Subsection C can not have effect we are wrong. We can not prohibit that interpretation of the contract. If those contracts mention taxes in any of those contracts which mention taxes as to those contracts the tax is null and void. If the contract does not mention taxes and the court rules that we can not prohibit that interpretation, the cost or processing — then the tax itself is null and void. That provision of Section 5 is the nonseverability provision in reference to the producer's contract and that is very important because it means that if we are unsuccessful in measuring the tax against the pipeline company who then collects it from his customers, we can't accomplish that then the whole measure is null and void. That is to protect against the impacts upon producers and processors here in Louisiana. That is the bill.

(Senator Eagan) Let's hear if you will excuse yourself for a minute, we will hear from the opposition.

(Alan Breaud) Mr. Garner, Mr. Woodard, Mr. Slaton

(Senator Eagan) Gentlemen, if you would just be seated. Mr. Garner you will be first, if you will.

(Mr. Slaton) Mr. Chairman, I would like to go first if you would.

(Senator Eagan) All right.

(Mr. Slaton) Mr. Chairman, members of the committee, my name is G. R. Slaton and I represent the Mid Continent Oil and Gas Association. This organization is a trade association which represents the individuals and companies who are responsible for the production, marketing, and transportation, refining for about 92% of the oil and gas which is produced in this state. I have a testimony here that I would like to read to you and if you got any question, you can stop me and I will be able to go back to where I was because it is a rather complicated issue. The proposal by Mr. Tauzin as he has explained is an attempt

to levy a first use tax on natural gas produced offshore in the federal zone and is brought into Louisiana. This idea was first conceived in this state approximately ten years ago and in an effort to make it constitutional it has been changed considerably to take a shape of the bill that you have before you, House Bill 768. All this forms, those pushing the issue have vouched for its constitutionality. Those opposed have denied it. The same applies for this bill. This issue has been on the House side numerous occasions, but this is the first appearance before the senate committee. The author has explained to you some facts as to how the handling of natural gas or how natural gas is handled, but I would like to explain it to you in my way so that it would put in proper context my remarks. Offshore federal zoned gas is produced and owned at the time of production by producing companies. At the offshore platform where the gas first comes to the surface, it is purchased by a pipeline company. It is transported from there by the pipeline company in this company's pipeline usually to a onshore gas processing facility. Then on to the final pipeline company. The producer, although having sold the gas, has by the contract of sale retained the right to remove the liquefiables in the gas, and in addition, has agreed to bear the cost of this removal. When the gas arrives at the processing plant, which by the way the plant is owned by the producer, the producer removes the liquefiables which are approximately from 4 to 6% of the total gas stream or the total gas volume. These in products which are your ethanes, propanes, butanes, and natural gasoline are sold mainly to Louisiana consumers. The processed gas remaining which is approximately 95% of the total gas volume entering the plant is returned to the pipeline company to be transported to its ultimate consumer usually out of the state of Louisiana. These are forementioned events in the gas flow apply to approximately 80% of the offshore gas. Some of the gas is brought into Louisiana in pipelines owned by the producers and is transferred to the pipeline company after it has been processed. Some gas is brought into Louisiana for use in Louisiana. However, all these exceptions to the general

rule do not toal over approximately 20% of the total offshore gas. Therefore, the owner of the gas as defined in House Bill 768 is the interstate pipeline company in about 75 to 80% of the cases. It is this entity who must pay the tax levied by this bill, because it is the owner of the gas at time the first use which everyone it might be in Louisiana occurred. The careful attempt to tax the owner is purposely made in hopes that this owner will be permitted to pass this tax levy alone to the ultimate consumer somewhere out of Louisiana. This can be done if the pass on is approved by the Federal Energy Regulatory Commission which is formally the old Federal Power Commission. Because this is not a severance production or other similar tax, the pass on is not automatic and can be approved if it is considered a cost of service much the same as any other pipeline cost. Because of the obvious attempt here to levy a tax in Louisiana to be born only by out-of-state entities, it is my personal opinion that this pass on will not be allowed regardless of it constitutionality. There is no way that the federal government can permit this result. It is the same problem that producing states and producers have been saddled with together. There are too many voters in those consuming states. Gentlemen, the Federal Energy Regulatory Commission is a political body and there is no way in my mind they can allow this tax to be passed on to the people that they must represent. Now when a pass on is denied, the pipeline company will look elsewhere for relief. It certainly is not going to keep the tax if it can get out of it. It has two options which it will possibly pursue simultaneously. In as much as it is the owner and must pay the tax and will probably do so under protest and the allege the constitutional issue in its protest. At the same time, it could possibly withhold from its producers payment for the gas in an amount equal to the tax. This will be done because of the contract that calls for the producer to pay the pipeline company for the cost incurred by the pipeline company as a result of gas processing. The pipeline company will be alleging that the first use of the tax is the processing. The litigation to resolve this issue will probably take several years and a

tax will be held in escrow during this period. To prevent the pipeline company from demanding payment from the tax from the producer Section 1303 Paragraph C of House Bill 768, carefully repudiates the aforementioned contract. Most everyone agreed that this is unconstitutional. I will read for you sections from the *U.S. Constitution* as well as the *Louisiana Constitution* from 1974. The Constitution of the U.S. Section 10 — Restrictions Upon Powers of States — "No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law imparing the obligation of contracts, or grant any title of nobility." *Louisiana Constitution of 1974* — Article I — Section 23 — Prohibiting Law — "No bill of attainder, ex post facto law, or law imparing the obligation of contracts shall be enacted." Let's see where these facts take us. First, Federal Energy Regulatory Commission probably will not let the tax, no way. Second, the tax will probably be ruled unconstitutional for any other uses that might be claimed. Three, the only resale use defined in the bill of any substantial amount of gas is that related in the processing of the gas. This is also the only use to which this gas has any chance of constitutionality. If this use is constitutional, the contract abrogation clause certainly is not. So at this point the producer would bear the tax. Let me state here, that the author has said from the time he began working on this tax that he had no intention for it to be a burden on either the pipeline company, the producer of the Louisiana consumer. He has attempted to provide for this eventuality by credits which I understand that you will take up at a later date. Recently, he has added a clause making the bill void, if the tax would fall on the producer in the even that the Federal Energy Regulatory Commission denies the pass on, and Section 1303 Paragraph C of the bill is declared unconstitutional. While recognizing and appreciating Mr. Tauzin's efforts to remove the producers from any liability under this tax, we still have some grave concern and fears that we may have to bear

some if not all of the burdens. Because of these fears and the fact that will give you an insight as to why the author came to the realization that he had to protect the producer as much as possible. I would like to briefly explore what would happen if the producer should have to bear the tax. After the act of processing, the producer is left with about 5% of the total gas stream which is in the form of liquefiables which is your propane, butane, ethane and your natural gasoline. This will mean that only 5% of the stream would have to bear the tax levied on 100% of that stream. This could cause propane and butane to increase in price by 33⅓%, if the FBA would allow a price increase. Those commodity prices are still controlled as is that of natural gasoline. Ethane prices are not controlled except but by market conditions and they would probably not permit an increase. But if all of these prices could be increased, the cost would be borne by the Louisiana consumer. Much of the propane and butane increases would be borne by the farmer. The ethane increase by the chemical companies. However, if a producer could not pass along its tax cost, he would attempt to absorb it. I am told, though that many gas plants are not that profitable. This would cause the closure of some plants resulting in a job loss and the loss also of the plant's products for Louisiana use. It should be recognized that as the price of gas increases, it becomes less advantageous to process the liqueifables. The liquefiable could be left in the gas stream and would increase its BTU content. The pipeline companies sell their gas based on BTU content and would welcome this commodity. Additional processing costs as a result of this tax would be another factor making it less advantageous to process and more profitable of the Federal Power Commission and now the Federal Energy Regulatory Commission to approve gas sale contracts wherein the producer retains the right to process for the liquefiables. There is now action pending wherein the northern consumers making a demand for this valuable part of the gas. Any action by Louisiana to tax interstate gas to cause the federal government to demand that these liquefiables be left in the gas. As the shortage of gas intensifies, this

possibility grows stronger and I ask you how could our farmers and chemical companies be without this supply of liquefiables. To sight another example of what can happen if this bill is passed, may I can your attention to a New Mexico law providing for the level of a tax on electric power. Some of this electric power was exported to adjoining states and a credit was given to New Mexico electrical users for the amount of the tax. This effectively exported all the tax. Something like House Bill 768 would like to do. I would like to read it for you the *Tax Reform Act* of 1976 by the U.S. Congress. *Tax Reform Act* of 1976 — Title II — Discriminatory Laws — Section 201 — "No state or political subdivision thereof may impose or assess a tax on or with respect to the generation or transmission of electricity which discriminates against out-of-state manufacturers, producers, wholesalers, retailers or consumers of that electricity for purposes of this section a tax is discriminatory if it results either directly or indirectly in a greater tax burden on electricity which is generated and transmitted in interstate commerce and on electricity which is generated and transmitted in intrastate commerce. This is one example of what can happen. Another question can be asked is how will Congress react in a treatment of a natural gas bill presently before that body if this bill is passed. I think we would have to consider that. As you know, Congress doesn't sympathize with producing states. They never have, and I don't think they will. Nor for that matter do they sympathize with the producers. They could react and do something about allocation of intrastate gas or to deal with a most recent problem area in this federal proposal, how might they react to the issue of the severance tax. Senator Johnson was able to get some temporary relief. I say temporary because the bill hasn't passed yet. By allowing the severance tax to be added to the congressionally mandated gas prices, we hope this bill not cause the confrees to change their mind on this issue. Let's look for amoment at the tax credit bill. Representative Tauzin and Representative Laborde have in House Bill 1187 attempted to provide a means for the producer to be reimbursed for the first use

tax if he must finally bear. I would suggest to you two things to consider when relating that bill to this one. First, in many cases the producers will not be able to receive enough credit from the severance tax that we are paying for the first use tax. As our Louisiana production decreases and offshore production increases more and more, producers may fall into the category of not being able to recoop all their losses from the severance tax. Secondly, House Bill 1187 provide only a credit. As we have seen in the pass, these credits have a habit of leaving us from time to time. One legislature passes a credit and the next one repeals it. I have heard somebody say that the difference between a credit and a subsidy is four years. We are very much concerned that this could happen in this instance. Gentlemen, there has been no need shown for a tax at this time. Only because the idea proposes to tax out-of-state gas consumers, do you give any serious consideration to this bill. All of you know that there is no such thing as a free lunch. This legislation, if it works as the author desires, in my opinion, can still be detrimental to this state and its citizens. It can cause the federal government to take retalitory such as forbidding the producers to process the gas. Again, I ask you where would we be then as far as our supply of ethane and butane for our farmers and our chemical companies. This legislation * * *.

(Changing the tape)

(Senator Eagan) I don't want to set a time limit. Can you give me an approximate time of how long you will take, Mr. Garner.

(Mr. Garner) It will take around twelve minutes.

(Senator Eagan) Well, that's fine.

(Mr. Garner) Mr. Chairman and members of the committee, I am A. C. Garner, Jr., Manager of the Southeastern Production Division of Exxon Company, U.S.A. Southeastern Division is headquartered in New Orleans and encompasses Louisiana and several other states and Louisiana OCS area. I appreciate the opportunity to

appear before you to discuss Exxon's views and oppostions to the proposed first use tax. I would like to stress that point that Exxon has never withdrawn its opposition to this first use tax. We are opposed to this tax because we believe that it would be detrimental to Louisiana, because it attempts to abrogate contracts entered into freely by private parties and because we believe the tax is unconstitutional on several counts. Mr. M. Truman Woodard, Jr., Senior Partner in New Orleans firm of Milling, Benson, will discuss the major constitutional effects of the first use tax for you in a moment. We have several major points that we would like to discuss with you today. First, we do not believe that the Federal Regulatory Commission will permit pass through of the first use tax either on an interim basis or a ultimate basis. We believe there is a potential impact of this major that could be detrimental to plants recovering ethane, propane and butane from offshore gas for use in Louisiana by Louisiana industries and rural consumers. We believe the uncertainty is created during prolonged litigations and the intrusion of the state into private contracts will impair the investment climate for Louisiana, for Louisiana gas processors and the petro-chemical industry in this state. With these points in mind, let's take a look at how the first use tax is suppose to work. Representative Tauzin made quite a detailed account of how this tax would work so I will not belabor those points again. The pipeline companies are expected to pass this tax on to gas consumers outside the state of Louisiana. It a Louisiana producer is unable to pass on the tax or if Louisiana consumers are affected by the tax because they use intrastate gas, first use credit bill have been designed to protect the producers and consumers in this state from this impact. While we realize that the possible operation of this legislation is subject to speculation, we believe, that there is a logical series of events that most probably will occur. They are not the events, we think, proposed by the proponents of the first use tax. We share the frustration of Louisiana and other producing states over a continuation of federal price controls that have held gas prices at unrealistically low levels since

1954 and that have held prices for crude oil at unequally unrealistic levels since 1971. Exxon has consistently called for an end to price controlls on natural gas and crude oil. Exxon has consistently urged the formulation of a national energy policy as recognized as a vital role that producers in producing states must play in helping this nation meet its energy needs in the year ahead. Gentlemen, how can any of us really expect the Federal Energy Regulatory Commission the old FPC which have kept natural gas prices at such low levels since 1954 to permit Louisiana to collect more than $200,000,000 a year from gas consumers outside of Louisiana either ultimately or even during the years of prolonged litigation while the constitutional issues of a first use tax are debated in the courts and possibly in Congress. We believe that to expect even interim pass through of this tax is unrealistic. Now let's think for a moment about what happens to this first use tax if the FREC tells the interstate gas pipeline companies they can't pass the tax on to out-of-state customers. Exxon sold its gas to the interstate pipeline companies at these offshore platforms, we reserve the right to recover the ethane, propane, butane and other natural gas liquids from the gas when they came ashore. Most of the gas liquids that we recover are sold right here in Louisiana. In return for the right to recover these liquids, we agreed in our contracts to assume all costs associated with processing the gas to recover the liquids. We believe that if the FREC refuses to allow interim pass through of the first use tax during the years of prolonged litigation, the pipeline companies will seek to recover the cost of tax through this contract agreement in which we the producers agreed to assume all costs of processing. We think this is highly likely since at least three of the taxable first uses occur only because we are exercising our right under these contracts to recover the gasoline. The primary one is the processing of the gas. Is the pass back of the first use tax for the pipeline companies to the producer that the first use tax bill attempts to prevent by stating in Section 1303 C that any agreement or contract by which a owner of natural gas at the time a taxable first use is heard that is

the pipeline company claims the right to reimburse on a refund of such taxes from any other party interests other than the purchaser of such natural gas a producer is hereby declared to be against public policy and unenforceable to that extent. The policy of the bill — you can easily refer to this as a contract modification. must not be dilluted by this exercise and . The fact is that the state is attempting to make unenforceable a provision of a contract entered into freely by two private parties. No matter how you do it, that is abrogation of contract. Such abrogation is certainly unconstitutional and is clearly prohibited by both the 1974 *Louisiana Constitution* and the *U.S. Constitution*. We have no doubt that the courts ultimately will strike down this provision. However, in the meantime, we believe, that Louisiana will send a clear message to business in the rest of the country that private contracts are not safe in this state. Let's get back to the question of what happens to the tax. When the pipeline company tries to pass a tax back to the producer in violation of Section 1303 C. The producer can go to court and attempt to obtain a preliminary injunction and join the pipeline company from passing this back. If the producer wants to receive full credit for the gas, the producer must attempt to uphold Section 1303 C in court. The inflation defending contract abrogations which is important to us. If the courts deny the producers of the preliminary injunctive relief under an amendment which we understand will be offered to House Bill 1187, the producer would then be eligible for a credit against severance tax. We appreciate the author's efforts to address the problems at Exxon and other members of industry have raised during the course of discussions on the first use tax. Amendments to both House Bill 768 and House Bill 1187 might help to reduce essential impact of the first use tax on Louisiana industry and rural residents. However, we believe there are several problems with these protective majors. The track record of industrial tax credits in Louisiana is a poor one. The manufacturers gas tax credit, for example, repealed in 1972, reinstated in 1973, repealed again in 1977. The time comes when

Louisiana producers or consumers need to rely on the credits for protection from the impact of the first use tax. Will the credit be there? Will the money be there to pay the credit? In the case of producers, there is another serious question. The severance tax liability of producers in Louisiana is declining as our onshore production declines while potential first use tax liability is increasing in new field offshore of Louisiana brought to full productive capacity. As mentioned by Mr. Slate, the result is very possible to be that first use tax liability of producers may see their severance tax credits forcing them to bear increasingly large portions of the first use tax. If for some reason these credits are either negated or not available, what impact will that have on the producers who recover ethane, propane and butane from offshore gas at plants in Louisiana for use by Louisiana customers in industry. The producer may be able to pass some of the tax along to gas purchasers, if he owns the gas when the tax is incurred. If he does not own the gas, and this is the case where 85% of the gas coming from offshore and in our case it is 95% of the gas, then the producer has two alternatives; pass the tax on to the price of ethane, propane and butane or consider discontinuing operations made unprofitable by the tax. Let's discuss the first alternative for just a moment. Could the producer recover the cost of tax and product process. If the credit were not able and Exxon was forced to bear the full effect of the tax, we estimate that the net maximum initial impact on Exxon in 1979 to be as high as twenty-two billion dollars. Based on our 1979 forecast of operations, we would have to increase propane, butane and ethane prices between 5 and 6 cents a gallon to recover that impact. Assuming the ability to ultimately recover some or all of the additional costs through price increases the impact will fall directly on Louisiana consumers who purchase these products. In the case of ethane, the major raw material for Louisiana petrochemical plants, the prices are not federally regulated thus recovery of added costs through higher prices is contingent on market conditions and contract provisions. Attempts to increase ethane prices would likely fail in the

face of present and foreseeable market conditions. Ethane purchasers could reasonably be expected to look to lower costs supplies in neighboring states as comparison of 60% of ethane produced in the U.S. as produced in Texas where about 19% of the total is produced in Louisiana. So attempts to raise prices sufficiently maintain profitability on process in operations are not likely to be successful. If we are unable to recover th cost of the tax, then propane, butane, and ethane prices, the only alternative is to review the continued recovery of these products specifically, applying the seven cents per MCF tax on a 1977 enter stream going of mine plants which we own or in which we have an interest. Processing of our gas would become uneconomical in seven of the nine unless we could claim the credit against our severance taxes or recover costs through our product process. I should emphasize that this impact results on a before tax and a before depreciation basis. The same general impact is anticipated on a 1979 operations as well. The second alternative then is to phase out liquid extraction operations at the earliest possible moment. Ultimately such action will reduce the liquid supply for rural consumers in the petro-chemical industry. As individual companies reach these decisions there is a compound impact on these that are joining on by several companies. Eventually as the extracted void and declines, entire facilities could become uneconomical and joint owners could decide to close them down. The net result is then magnified by the loss of the entire output of these facilities including any offshore gas or any onshore gas that is being processed in the plant. The proposed litigation will have impacts on Louisiana gas industry reaching far beyond the economic impacts just outlined. It encourages strive of litigation between parties to contracts and rate schedules. The extensive legal cost incurred and many years of effort that would be lost in this activity are not counted in the early economic impact assessment. Neither does that assessment include cost of huge sums of capital likely to be tied up in escrow for years for a law suite and appeals as tried. However, more serious than the immediate economic impact is the precedent that would be

set by this legislator or bonafide contract provisions between private parties were to be nullified by the legislative . Sanctity of contract is vital tenant of America economic life and the idea of violating it would be repugnant to all of us. There is one further aspect of a broader nature I believe merits you consideration. Louisiana is widely recognized as a state which has the leadership in development of energy resources for the nation. The state's leaders have been in the forefront of those recognizing the need for comprehensive national solution to domestic energy problems and in setting examples for other states with a resource potential, however the actions proposed in this legislation could cause serious negative effects on the state in the future. In this regard Congress has already outlawed discriminatory state taxes on generation of electricity for the interstate market in the Tax Reform Act of 1976. I would like to now call on Mr. Truman Woodward to address the constitutionality of this first use tax.

(Senator Eagan) Again, Mr. Woodward, I don't want to set a time limit, but what do you think your presentation will take.

(Mr. Woodward) Ten to twelve minutes. Call me and I will cut it short. Mr. Chairman and gentlemen of the committee, I have to start off by first disagreeing with Governor Edwards. I do not believe that the recent decision in the U.S. Supreme Court show any tendenacy of changing the rule with respect to either of these two constitutional questions. In so far as the first validity of the use tax itself is concerned, the interstate commerce clause of the Constitution vest in Congress the right to regulate commerce between the states. The supremacy clause of the U.S. Constitution provides that Congress in any area where the federal government has control has superior power and supremacy over any state law. Under that, Congress has passed the Outer Continental Shelf Act which prohibits any taxation of outer continental offshore gas. It has passed the Natural Gas Act giving control of

all regulatory procedures of the Congress and to the commission and it has passed as you have heard, the Tax Reform Act of 1976. Under the interstate commerce clause, the Supreme Court for over the years have followed a very simple procedure. They have said that the state may tax to the extent that it was necessary to provide state revenues where it did not interfer with the operation of interstate commerce. This caused the court to have to decide the cases on a case by case basis. Over recent years, the courts have adopted four rules which they say that may tax levied by a state must follow all four, not any one of them. It must not be discriminatory. It must have a sufficient connection with the state. It must be fairly apportioned and it must provide an equal benefit to the taxpayer. House Bill 768 doesn't qualify under any of these rules. The last two cases that have been decided, both in the last two years, were the Washington-Stevedoring case and the Mississippi case called the auto transit. In both of these cases, the U.S. Supreme Court upheld the tax on the ground that it levied equally on intrastate as well as interstate action. It apportioned the taxes between them and it levied a fair benefit because he state provided the highways over which they would use the Mississippi and the minimal requirement need in the state of Washington. In this particular situation, this Bill 768 exempts all Louisiana intrastate gas from the tax because it doesn't, because it has paid the severance tax. It exempts all gas that is passing through Louisiana from another state on which it has paid severance taxes. It is clearly discriminatory to tax this gas which moves through Louisiana without taxing the same procedures on the Louisiana gas without taxing the same procedures that take place with respect to Texas gas. And furthermore, we found that with a minimal of effort that there is a further gross discrimination in that there is 48,000,000 cubic feet of gas today that moves through Louisiana from the outer continental shelf of Texas pays severance taxes to Texas and is processed in Louisiana. Now if you don't levy the processing on that gas, how are you going to levy it on the gas coming from the outer

continental shelf. It is clearly discriminatory. The seven cent severance tax which is levied by Louisiana is based upon the wrenching from our soil a nonrecoverable resource. It does not apply to the uses that are being the bases for the tax under House Bill 768. The measuring of the gas, the passing through a pipeline or even the processing of the gas, but even as the proponents of this bill say that it is the processing that they find to be of sufficient use in the state so that it can be levied. There is processing taking place in Louisiana of Louisiana gas that is not being taxed and even more closely aligned there is processing taking place in Louisiana of Texas gas which Texas has paid, collected a severance tax. Now all of these other uses in Louisiana are not taxes, only the severance from the soil. Here again is a discrimination. The tax is not fairly apportioned. It is not apportioned at all so it violates that rule. There is no benefit that is given to the taxpayers here that isn't given to Louisiana gas or to the Texas gas passing through or to the Texas gas that is being processed. All of that gas passes through pipelines that pay ad valorem taxes on it. They all pass through processing plants on which ad valorem taxes are being collected so there is no additional benefit. Both of the two cases that were decided by the Supreme Court in the last two years say the semantics are unimportant. It doesn't make any difference how you label this tax. It doesn't make any difference what you call it. It doesn't make any difference how you dress it up. The court cuts right through to see whether this is an unlawful discrimination, an unlawful apportionment, an unlawful benefit on a unlawful tax on a connection that doesn't exist with the state. This tax does all of those things. In addition, you call this a use tax, but a use tax has been described by the United State Supreme Court as being not constitutional unless it is a use within the state and they don't mean stopping. They mean that it has to be consumed. The use taxes that have been permitted were use taxes which were equivalent to sales taxes that the tax could not collect because the property was bought in another state and brought in so that this is not a true use tax under the U.S.

Constitution. The Surpeme Court has defined use taxes and this does not meet that qualification. In addition, it violates the rule of dual process of law, because it is taking the property of these taxpayers without adequate compensation. Now let me dwell briefly on the question of impairment of contract. The free enterprise system requires both the due process and the nonviolation of that clause. We can not have a free enterprise system in this country without both of those two qualifications. The courts have said that in a change with respect to that clause a state does have police power violates the health or the welfare or the moral of the people there can be restrictions. But it is only in those circumstances and it is held that it can not be arbitrary which this one is. It can't be oppressive which this tax is. It can't affect one class and not another. It has to be for the general benefit of all the people in the state for it to be effective. It can not be a question of policy or social obligation and if it is to produce revenues, let me point out to you, that it doesn't make any difference to the state of Louisiana which of the two contracting parties pay the tax. It is just a shifting by the state of the burden from one taxpayer to another so you can't base it on the fact that the state needs the revenue even if it does. The state is not collecting it as a revenue tax. The state is collecting a tax which it hopes can be exported outside of the state to the consumers. Under all three of the legislative enactments, the OCS Act, the Natural Gas Act and the Tax Reform Act, is impossible to do this. The proponents of the acts say that this is a minimal modification of a contract. It is just a modification. It's not an impairment of a contract. Let me point out to you that there is $170,000,000 that would be affected by this and that is certainly not a minimal nodification. Moreover, as far as the impairment is concerned the U.S. Supreme Court and other cases, other State Supreme Courts have said that a mineral lease which has a provision in it that the lessee or the lessor shall pay taxes upon the revenues from this must be abided by the state can not change the burden from one to the other and certainly the provision in a mineral lease as to who is

going to pay the taxes is a very subordinate provision to the lease as a whole which is a right that the company gets to go in and get the oil or the gas or the other minerals. So this is a peripheral and ancillary operation in a mineral lease that the Supreme Court has said specifically can not be changed by the state and impose a burden on one when the contract between the parties as levied on the other. I only want to point out one more thing and that is that just last year the united States Supreme Court had a question with respect to this — the New York Trust Company against the state of New Jersey and I am going to read you two sentences. "A state could not adopt as its policy the repudiation of debts or the destruction of contracts. Complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the state's self-interest is at stake. We do not accept this invitation to engage in the utilitarian comparison of public benefits and private rights." Thank you very much.

(Senator Eagan) Thank you gentlemen. I appreciate it. Mr. Tauzin, you have the right to close.

(Representative Tauzin) I will make it brief. The only issue they have raised in regard to the contracts is and I am going to say just a few short things. In 1954, the United State Supreme Court itself turned over regulations of interstate natural gas, the Federal Power Commission and rewrote every natural gas contract in this country. They left the title and the signatures on it and that is about it. In 1976, the U.S. Congress wrote off the most favorite nation's provisions in natural gas contracts. They wrote it right off. Today, FERC is daily rewriting contracts everyday. We had an oil company testify that although the production from a certain field had dried out, that the delivery requirements had run out under the contract, nevertheless, is requiring them to dedicate any new wells discovered to those old customers. Their contracts have run out a long time ago. They have extended and rewritten those contracts for the benefit of the customers who happen to live in those populated areas . No, this is not abrogation. We simply provided

that you can not interpret the contract to provide this pass back. The public policy is the tax will be apportioned upon the owners who presently don't contribute for the impacts they make on this state. Why is it fair and nondiscriminatory? It seeks to end discrimination. The discrimination is present today. The discrimination is that Louisiana natural gas and the buyers and users of Louisiana natural gas pay a seven cent severance tax. The buyers and users of OCS federal gas are paying no tax. The federal courts in a case in Mississippi, the Brady Case, and the Stevedoring case in Washington which over ruled a long line of decisions that said the state can not tax interstate commerce and said yes, a state can now tax interstate commerce effective now. It said very clearly you have to do it in a way that it does not discriminate against products that are already taxed, and that is why the Texas gas already taxed is . That is why the bill only addresses itself to natural gas that is not already taxed to create fairness and equity and to end discrimination. That is what that is all about. As to the pass through, you think the federal government won't allow the pass through, let me tell you something. The pipeline companies in this country are the only players in the game protected with a ten per cent return on top of cost of operations. FERC has to give them that, must give them that and will continue to give them that. You know why? Because the pipeline companies are serving those multitude, those millions of people benefiting from Louisiana and Texas gas. I'm not going to let those pipelines shut down. If this tax is constitutional just as ad valorem taxes are constitutional and have been allowed to be passed through, FERC is going to have to allow this particular tax to pass on through. It is going to have about a four cent, I think, impact eventually against the cost in the neighborhood to two dollars. That is the size of it on the national market. FERC can not allow those pipeline companies to lose money. If they operate efficiently, they are going to make a ten per cent profit today, tomorrow and for as long as those customers require that natural gas. Gentlemen of the committee, everything you read about impacts, liquefi-

ables and the processing, every thing you heard, were the arguments made by these gentlemen before we amended the bill. it can not happen. They know it can't happen. The bill provides a null and void clause. If there is any impact, the bill is null and void. All this surmising about what would happen if they had an impact was nice. I assume you enjoyed listening to it, but is has no irrelevance to the bill anyu longer. It can be no impact upon the producer processor, because if it occurs the bill is null and void. It is that simple. All that business about if that happened is just not so. As for the federal government not allowing the processing in Louisiana, you ought to know. You know where the impact of allowing all that liquid to remain in the gas is that it increase the BTU content by 1.1%. That is all. You know what it provides? It provides something like forty billion tons of ethane that is the main product processed out which is turned into countless scores and millions of products used by people all over this country that this country can not do without because that is the only source of it. The only reliable and economical source of it. That is not going to happen. The processing is going to continue right along. Once you worry about reaction. Let me tell you about reactions. I told you what Congress is presently doing. Congress is enacting an act which recognizes the state's right to impose user taxes on energy development. Let me tell you about the reaction that has been going on in this country. Why should Louisiana ask these other people to pay us a reasonable compensation? Let's talk about those other people. Do you know right now those other people who are protected by the federal government are buying natural gas from Louisiana at one-third of the prices your citizens who voted for you are paying? Do you know that? People in New York and New Jersey. And on top of that when that occurs the lost to the state's treasury in Louisiana in severance taxes and royalty income on the production of oil and gas; you know how much we are losing annually because of those price controls. Not only the fact that we are paying 3,000 more in Louisiana in subsidizing to that extent we are losing $500,000,000 a year in income

because of federal price controls that are designed to protect those people from New York who the people are concerned about saying that they shouldn't have to pay any compensation in Louisiana. You know what else is happening in the country? A thing called entitlements. You know that $15 a barrel of Arab oil is coming into the west coast? You are helping pay for it in Louisiana. $2,000,000,000 worth of impact in the southwest. Under the entitlement program the cost of that barrel of oil delivered to Massachusetts is spread out among the rest of us. There is a bill in Congress right now that would add another part to the entitlements program that would cost Louisiana citizens 10.4 million dollars a year to help pay the utility bills of the people living in New York, New Jersey and Massachusetts. Reaction! I think maybe it is time for us to consider the interest of Louisiana. Reaction, let me tell you what is heppening in the country. If we pass this tax on natural gas, there is not a citizen in the country that has to buy our natural gas, if he doesn't want it. If he thinks we are being unfair to him, and he doesn't want to pay that tax, and he wants to burn coal or something else he's got up there he can do it. He doesn't have to pay it. But you know what's happening in the country? We can't use it if we want it no matter how much it's taxed. They are taking control of it — even the intrastate supplies that we develop very carefully for a long period of time. They are taking control — do you know what they are telling us we have to do. We have to burn their coal and they are controlling the prices for us and let me give you the latest. Let me give you the latest — you haven't heard it. Montana — one of the prime sources of western coal coming to the utility companies of Louisiana recently put a 30% tax on coal. The federal government add a 12½ tax and the local government where the coal is produced set another 5% taxes — 47½ taxes that we are going to pay to produce electricity from coal and we don't have a choice you see. If we don't want to pay those taxes on coal we don't have a choice in Louisiana. We've got to burn the coal. You worried about reaction. They've been doing it to us. This is not a bill

brought in any kind of retaliation. However, I want you to understand that the bill is designed strictly and only to provide Louisiana a fair measure of compensation for producing that resource and if done in an equitable fashion, it creates equity in the market place. I urge your adoption of the bill.

(Senator Eagan: The question that is before the committee is House Bill 768. What is the pleasure of the committee?

(Senator Sevario) I move for a favorable report.

(Senator Eagan) Senator Sevario moves for a favorable report. Is there any objection to a favorable report? Hearing no objection House Bill 768 is reported favorably.

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

I, Jerry J. Guillot, Director of Committee Staff Services and Custodian of Committee Records, do hereby certify that on this day, September 8, 1980, that the foregoing is a true and correct copy of the transcription of a tape recording made at the June 26, 1978 Meeting of the Senate Committee on Revenue and Fiscal Affairs concerning House Bill No. 768 of the 1978 Regular Session of the Louisiana Legislature, and that the tape used for transcription was a tape used to record said meeting and that said tape has been in the constant possession of my office with the staff of the House Committee on Ways and Means.

/s/ JERRY J. GUILLOT
Jerry J. Guillot, Director
Committee Staff Services
Louisiana Legislative Council